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STATE OF NEW YORK  
DEPARTMENT OF HIGHWAYS

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THE HIGHWAY LAW

LAWS OF 1909, CHAPTER 30

CONSTITUTING

Chapter 25 of The Consolidated  
Laws

AS AMENDED, ACTS OF LEGISLATURE 1910-1911-1912-  
1913-1914, WITH ANNOTATIONS

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*Transcript.*

# THE HIGHWAY LAW

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L. 1909, chap. 30.—AN ACT RELATING TO HIGHWAYS, CONSTITUTING CHAPTER TWENTY-FIVE OF THE CONSOLIDATED LAWS.

(In effect February 17, 1909.)

As amended by the Legislatures of 1910, 1911, 1912, 1913 and 1914.

## CHAPTER XXV OF THE CONSOLIDATED LAWS.

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### HIGHWAY LAW.

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| Article | I. Short title and definitions (§§ 1-3).<br>II. Department of highways (§§ 10-25).<br>III. District or county superintendents (§§ 30-33).<br>IV. Town superintendents; general powers and duties (§§ 40-82).<br>V. Highway moneys; state aid (§§ 90-111).<br>VI. State and county highways (§§ 120-180).<br>VII. Maintenance of state and county highways (§§ 170-179).<br>VIII. Laying out, altering and discontinuing highways; private roads (§§ 190-240).<br>IX. Bridges (§§ 250-268).<br>X. Ferries (§§ 270-274).<br>XI. Motor vehicles (§§ 280-293).<br>XII. Miscellaneous provisions (§§ 320-343).<br>XIII. Saving clauses; laws repealed; when to take effect (§§ 350-357). |
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### ARTICLE I.

#### Short Title and Definitions.

##### Section 1. Short title.

2. Definitions.
3. Classification of highways.

Section 1. Short title.— This chapter shall be known as the “Highway Law.”

§ 2. Definitions.—1. The term “department,” when used in this chapter, shall mean the department of highways as constituted herein.

2. The terms "commission," "highway commission," and "state highway commission," when so used, shall each mean the state commission of highways. The term "state superintendent of highways," when so used, shall mean the commissioner of highways, and reference to powers and duties of the state superintendent of highways to be exercised subject to the commission shall mean the exercise of such powers and duties by the commissioner of highways without the concurrence of any other commission or officer.

3. The term "district superintendent" or "county superintendent," when so used, shall mean the district superintendent of highways or county superintendent of highways respectively.

4. The term "town superintendent," when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of five feet or less.

Amended by L. 1911, ch. 646, L. 1912, ch. 83 and L. 1913, ch. 80.

**Sidewalks as part of highway.** A sidewalk is as much a part of the highway as the traveled wagon road. *People v. Meyer*, 26 Misc. 117, 56 N. Y. Supp. 1097, 1099 (1899).

**Private roads.** Provisions are made in this chapter for the laying out of private roads. See Highway Law, §§ 211-226. As to what constitutes a dedication of a private road as a public highway, see Highway Law, § 191, and the cases cited thereunder.

**§ 3. Classification of highways.**—Highways are hereby divided into four classes.

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of the highway law and acts amendatory thereof.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. County roads are those designated as such under a general or special law and constructed, improved, maintained and repaired by the county as such in counties in which the county road system has been or may be adopted.

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions

of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the two preceding classes.

Amended by L. 1910, ch. 567 and L. 1912, ch. 83.

## ARTICLE II.

### Department of Highways.

- Section 10. Department of highways established.
11. State commission of highways; commissioner of highways.
  12. Oath of office; undertaking.
  13. Principal office; official seal; stationery.
  14. Deputy commissioners, secretary and chief auditor of the department.
  15. General powers and duties of the commissioner of highways.
  16. Division engineers.
  17. Duties of division engineers.
  18. Salaries and expenses.
  19. Appointment of officers, clerks and employees.
  20. Blank forms and town accounts.
  21. Examination of accounts and records.
  22. Condemnation of bridges.
  23. Estimate of cost of maintenance of state and county highways.
  24. Rules and regulations for state and county highways.
  25. Patented material or articles.

§ 10. **Department of highways established.**—There is hereby established a department, to be known as a department of highways, which shall be constituted as provided in this chapter, and shall have the powers and perform the duties hereinafter prescribed.

§ 11. **State commission of highways; commissioner of highways.**—The state commission of highways is continued. Such commission shall consist of a single commissioner, to be known as the commissioner of highways, who shall be the head of the department of highways. Such commissioner shall be appointed by the governor by and with the advice and consent of the senate for a term of five years. He shall devote all of his time to the duties of his office. The governor may remove such commissioner for inefficiency, neglect of duty or misconduct in office. A copy of the charges against him shall be served upon such superintendent and he shall have an opportunity of being publicly heard in person or by counsel in his own defense upon not less than a ten days' notice. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and his findings thereon, together with a complete record of the proceedings. The

commissioner of highways shall receive an annual salary to be fixed by the governor of not exceeding ten thousand dollars. Wherever by the terms of this chapter or other statute, action by the commission is required to be taken by resolution or in any manner by the concurrence of the members of a majority, such action shall, when the commission consists of a single commissioner, be taken by a formal order of such commissioner entered in the records of the department of highways.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

**§ 12. Oath of office; undertaking.**—The commissioner of highways shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require. Such undertaking shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such commissioner of highways in accordance with law, or in default thereof that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

**§ 13. Principal office; official seal; stationery.**—The principal office of the department shall be in the city of Albany in rooms provided by the trustees of public buildings. The department shall have an official seal, to be prepared by the secretary of state, as provided by law. The offices of the department shall be supplied with necessary postage, stationery and office furniture and appliances, to be paid for out of moneys appropriated therefor, and it shall have prepared for it by the state, such books and blanks as are required for carrying on the business of the department.

**§ 14. Deputy commissioners, secretary and chief auditor of the department.**—The commissioner of highways shall appoint a secretary and chief auditor of the department and three deputy commissioners. Each of the deputy commissioners shall have had practical experience in actual building, construction and maintenance of highways and be familiar with the operation and effect of state statutes relating to highways and bridges. One of such deputies shall be practical civil engineer, to be known as

the first deputy, and his duties shall relate to the plans, specifications and execution of all contracts pertaining to state and county highways; one of such deputies shall be known as the second deputy, and his duties shall relate to the maintenance of state and county highways; one of such deputies shall be known as the third deputy and his duties shall relate to the repair, improvement and maintenance of town highways and bridges, and county roads and roads and bridges on the Indian reservations. The first deputy shall receive an annual salary of six thousand dollars. The second and third deputies and the secretary shall each receive an annual salary of five thousand dollars. The chief auditor shall receive an annual salary of five thousand dollars. Each deputy, the secretary and the chief auditor shall before entering upon the duties of his office each take and subscribe the constitutional oath of office. Each deputy, the secretary and the chief auditor shall each execute an undertaking in the sum of five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, by order filed in the office of the department, may at any time designate a deputy to sign on behalf of the commission such papers and documents as are specified in such order. The chief auditor shall determine the authorization for and the accuracy of every expenditure of state funds for highway purposes and his report thereon, after approval by the commissioner of highways, shall be transmitted to the comptroller for final audit. Each deputy, the secretary and the chief auditor shall have such other and further duties as the commissioner of highways may determine, and shall each be subject to his direction and control and may be removed by him.

Amended by L. 1913, ch. 80.

**§ 15. General powers and duties of the commissioner of highways.**—The commissioner of highways shall

1. Have general supervision of all highways and bridges which are constructed, improved or maintained in whole or in part by the aid of state moneys.

By an opinion of the Attorney-General under date of May 22, 1913, it was held that the expenditure of money as provided in section 178 of the Highway Law, *post*, in the maintenance of county roads, as provided in paragraph 3, section 3, of the Highway Law, *ante*, clearly come under the jurisdiction of the Commissioner of Highways, as they are roads that are maintained in part by State money.

2. Prescribe rules and regulations not inconsistent with law, fixing the duties of division engineers, resident engineers, district, county and town superintendents in respect to all highways and bridges and determining the method of the construction, improvement or maintenance of such highways and bridges. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officers affected thereby.

3. Compel compliance with laws, rules and regulations relating to such highways and bridges by highway officers and see that the same are carried into full force and effect.

4. Aid district, county and town superintendents in establishing grades, preparing suitable systems of drainage and advise with them as to the construction, improvement and maintenance of highways and bridges.

5. Cause plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of bridges, when requested so to do by a district, county or town superintendent.

6. Investigate and determine upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of highways and bridges.

7. Make an annual report to the legislature on or before February fifteenth stating the condition of the highways and bridges, the progress of the improvement and maintenance of state, county and town highways, the amount of moneys received and expended during the year, upon highways and bridges and in the administration of his office, and also containing such matters as in his judgment should be brought to the attention of the legislature, together with recommendations as to such measures in relation to highways as in his judgment the public interests require.

8. Compile statistics relating to the public highways throughout the state, and collect such information in regard thereto as he shall deem expedient.

9. Cause public meetings to be held at least once each year, in each district or county, for the purpose of furnishing such general information and instructions as may be necessary, regarding the construction, improvement or maintenance of the highways and bridges and the application of the highway law, and the rules and regulations of the department, and also for the purpose of hearing complaints. He shall notify the district or county

superintendent of his intention to hold such meeting or meetings, specifying the date and the place thereof.

10. Aid at all times in promoting highway improvement throughout the state, and perform such other duties and have such other powers in respect to highways and bridges as may be imposed or conferred on him by law.

11. Approve and determine the final plans, specifications and estimates for state and county highways upon the receipt of the report and recommendations of the county or district superintendent, as provided herein, and transmit the same in the case of a county highway to the board of supervisors. After the approval of such plans, specifications and estimate by the board of supervisors and the return thereof to the commissioner of highways, in the case of a county highway and after his final determination in respect thereto in the case of a state highway, the commissioner of highways shall cause a contract to be let for the construction or improvement of such state or county highway after due advertisement.

12. Prepare tables showing the total number of miles of highways in the state, by town and county, and file a copy of the same in the office of the comptroller.

13. Divide the state into not more than nine divisions and assign a division engineer to the charge of each, subject to his direction, supervision and control. In making such division no county shall be divided.

14. Make and file with the comptroller a schedule of salaries of all officers, clerks, employees, engineers and superintendents, appointed by him, whose salaries are not fixed by law.

15. Inquire into the official conduct of all subordinates of the department.

16. Direct and cause to be made such repairs of state and county highways as he deems necessary, within the estimates and appropriations made therefor.

Amended by L. 1913, ch. 80.

**Authority of State Highway Commission.** By an opinion of the Attorney-General, under date of April 28, 1909, it was held that section 15 specifies and defines the powers and duties of the Commission and that its supervision and control are not limited to the highways which have been or will be constructed in whole or in part by State aid, but extends to all highways which are improved or maintained in whole or in part by the aid of State moneys. It will also be observed by subdivisions 4, 5, 6, 7, 8, 9, 10 and 12 of section 15, that the Commission has general advisory supervision over all public high-

ways in the State and that it is required to prescribe rules and regulations therefor.

The Commission also has supervisory control over moneys in the hands of the supervisor for such purposes and it is its duty to safeguard such funds, particularly those furnished by the State.

**§ 16. Division engineers.**—The commissioner of highways shall appoint a division engineer for each of the divisions of the state. Each person so appointed as a division engineer shall be a practical civil engineer having had actual experience in the construction and maintenance of highways and bridges. The salary of such engineers shall be four thousand dollars per annum. An office may be maintained by such division engineers at a convenient place within each division as authorized by the commissioner of highways. The salary and expenses of such engineers shall be paid out of moneys appropriated therefor upon the requisition of the commissioner of highways. Each division engineer shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office and execute an official undertaking in the sum of ten thousand dollars to be approved by and filed with the comptroller and renewed as often as the commissioner of highways may require. The commissioner of highways, subject to the provisions of the civil service law, may remove such division engineers.

Amended by L. 1913, ch. 80.

**§ 17. Duties of division engineers.**— Each division engineer shall devote his entire time to the performance of his duties. He shall, under the direction and control of the commissioner of highways:

1. Make or cause to be made all surveys, maps, plans, specifications and estimates necessary or required for the improvement, construction and maintenance of state and county highways within the division for which he is appointed.

2. Examine, revise and approve all plans, specifications and estimates and proposals for the improvement, construction, and maintenance of highways and bridges within his division, which may be submitted by the commissioner of highways, pursuant to the provisions of this chapter, or the rules and regulations of such commissioner.

3. Examine and inspect, or cause to be examined and inspected, the work performed on any highways, and report to the commissioner of highways as to whether the work has been done in

accordance with the plans and specifications and contracts made therefor.

4. Approve and certify to the monthly estimates or allowances for work being performed under any contract let for the construction, improvement or maintenance of state and county highways.

5. Inspect, or cause to be inspected, all state and county highways, and report from time to time in respect thereto, when required by the commissioner of highways.

6. Consult with district, county and town superintendents and other highway officers in respect to the proper methods of constructing, improving and maintaining highways and bridges.

7. Perform such other duties as may be prescribed by the commissioner of highways.

8. Have charge of the construction, reconstruction, maintenance and repair of state and county highways in his division, under the supervision of the deputy having jurisdiction thereof.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

**§ 18. Salaries and expenses.**—All engineers, superintendents, clerks, officers and other employees of the department shall receive the compensation fixed by the commissioner of highways except as otherwise defined and established in this chapter. In the discharge of their official duties the commissioner of highways, deputies, secretary, engineers, and the clerks, officers and other employees of the department shall have reimbursed to them their necessary traveling expenses and disbursements. Such salaries and expenses shall be paid by the state treasurer upon the warrant of the comptroller, out of moneys appropriated therefor in the same manner as the salaries and expenses of other officers, clerks and employees are paid.

Amended by L. 1913, ch. 80.

**§ 19. Appointment of officers, clerks and employees.**—The commissioner of highways shall appoint such resident engineers, district superintendents, clerks, officers and employees as may be required to carry out the provisions of this chapter, subject to the civil service laws and the provisions of this chapter, within the amount appropriated therefor, unless the appointment of such clerks, officers or employees is otherwise provided for herein. District superintendents, appointed as provided in this chapter, shall be appointed from lists prepared from examinations which shall test their qualifications for the actual construction and maintenance of highways and their executive capacity, rather

than their scientific attainments. Clerks, other than those employed in the principal office of the commissioner of highways, inspectors and other employees in the department whose duties pertain to the maintenance of highways, shall likewise be selected from lists prepared from examinations testing their general knowledge of the highway law and of the practical construction of highways. Inspectors of construction, other than engineers and levelers, shall be selected from lists similarly prepared, except that they shall be residents of the county within which the highway constructed or improved is located. To the end that the employees of the department of highways engaged in the work of constructing, improving or maintaining highways under the provisions of this chapter may be practical highway builders, the commissioner of highways is authorized to indicate to the civil service commission the relative value which should be given to experience and scientific attainments. The commissioner of highways, subject to the provisions of the civil service law, may remove the resident engineers, district superintendents, clerks, officers and employees of the department.

**§ 20. Blank forms and town accounts.**—The commissioner of highways shall prescribe and furnish blank forms of orders, reports and accounts and blank books, whenever in his judgment they are required for the convenience of his office and of highway officers.

Amended by L. 1913, ch. 80.

**§ 21. Examination of accounts and records.**—The commissioner of highways may, at such times as may be deemed expedient, cause an examination of all accounts and records kept as required by this chapter, and it shall be the duty of all county and town officers to produce all such records and accounts for examination and inspection, at any time on demand of a representative of the commissioner of highways.

Amended by L. 1913, ch. 80.

**§ 22. Condemnation of bridges.**—The commissioner of highways shall cause an inspection to be made of any bridge which is reported to be unsafe for public use and travel by the district or county superintendent, the town superintendent, or five residents of the town. If such bridge is found to be unsafe for public use and travel the commissioner of highways shall condemn such bridge, and notify the district or county superintendent, the town superintendent and the supervisor of the town, of that fact. The

district or county superintendent shall either prepare or approve plans, specifications and estimates for the construction or repair of such bridge without delay. The town shall provide for the construction or reconstruction of such bridge, as provided for by section ninety-three of this chapter.

Amended by L. 1913, ch. 80.

By an opinion of the Attorney-General under date of May 3, 1910, it was held that a bridge cannot be built or repaired unless the money is provided in some way for the work and that the whole underlying scheme of the Highway Law is defeated if the vote of the town is adverse to the proposition. The bridges which the towns are bound to support span many rivers, streams and ravines where fording or other means of crossing would be impossible and if a town refuses its consent to the construction or repair of a bridge which would cost more than \$1,500 and the bridge has either been washed away or become dangerous to travel, the road would have to be abandoned, travel along it discontinued and the general public inconvenienced until the tax payers of the town could be persuaded to vote the necessary appropriation. There is no authority conferred upon the Commission to act in the event of the failure of the electors of a town to vote the necessary appropriation and there is no power or authority given to anybody to go ahead with the construction or repair of a bridge, no matter how dangerous it may be, if the expense thereof is to be more than \$1,500.

**§ 23. Estimate of cost of maintenance of state and county highways.**—The commissioner of highways shall annually cause to be inspected all improved state and county highways, either by the division engineer, or the district or county superintendent of the district or county in which such highways are situated and shall require a complete report of such inspection which shall show in detail the condition of the highway inspected, the necessary work to be performed in the repair and maintenance of such highways, and the estimated cost thereof. The commissioner of highways shall revise said estimates and annually report to the legislature his estimated cost of such repair and maintenance for the ensuing year, as so revised, in detail by counties.

Amended by L. 1912, ch. 83 and L. 1913, ch. 80.

**§ 24. Rules and regulations for state and county highways.**—The commissioner of highways is hereby empowered to make rules and regulations from time to time for the protection of any state or county highway or section thereof. He may prescribe the width of tires to be used on such highways and he may prohibit the use of chains or armored tires by motor vehicles upon such highways, and any disobedience thereof shall be punishable by a fine of not less than ten dollars and not exceeding one hundred

dollars, to be prosecuted for by the town, county, or district superintendent and paid to the county treasurer to the credit of the fund for the maintenance of such highways in the town where such fine is collected.

Amended by L. 1913, ch. 80.

**§ 25. Patented material or articles.**— In the construction, maintenance or repair of state or county highways, no patented material or article or any other material or article shall be specified, contracted for or purchased, except under such circumstances that there can be fair and reasonable opportunity for competition, the conditions to secure which shall be prescribed by the commissioner of highways.

Added by L. 1913, ch. 80.

The Attorney-General in an opinion rendered June 26, 1913, held that under this section the use of patented material in the construction or improvement of highways was not absolutely prohibited, but the provisions of the section do make necessary some prescribed condition that the price of material to bidders must be uniform so that there be no advantage given one bidder over another so far as the patented article is concerned.

### ARTICLE III.

#### District or County Superintendents.

Section 30. Appointment of county superintendent.

31. District superintendents; appointment and salaries.
32. Removal of county superintendent.
33. General powers and duties of district or county superintendents.

**§ 30. Appointment of county superintendent.**— The board of supervisors of any county may appoint a county superintendent, determine the amount of the bond which he shall give, fix his salary, and provide for the payment of all the necessary expenses incurred while in the performance of his duties, which salary and expenses, shall be a county charge, and may remove such county superintendent for malfeasance or misfeasance in office, upon written charges, after an opportunity to be heard, not less than five days after the service upon such superintendent of a copy of such charges. The term of office of each superintendent shall be four years unless sooner removed by the board of supervisors as above provided, or by the commission as hereinafter provided.

Amended by L. 1910, ch. 567.

By an opinion of the Attorney-General, under date of May 2, 1913, it was held as follows:

"It would seem plain that under section 5 of the Public Officers Law this gentleman (meaning a county superintendent of highways) could continue to hold his office after the expiration of his term until the appointment of his successor."

Section 5, article 2, Chapter 47 of the Consolidated Laws:

**Holding Over After the Expiration of Term.**— "Every officer except the judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the Constitution, having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office after the expiration of the term for which he shall have been chosen until his successor shall be chosen and qualified; but after the expiration of such term of office shall be deemed vacant for the purpose of choosing his successor." \* \* \*

"If an appointment of a person to fill a vacancy in an appointive office be made by the officer, or by the officers, body or board of officers, authorized to make such appointment to the office for a full term, the person so appointed to such vacancy shall hold office for the balance of the unexpired term." \* \* \* *Public Officers Law, § 38.*

**§ 31. District superintendents: appointment and salaries.**— If the board of supervisors of any county shall fail to appoint a county superintendent, the commission shall appoint a county superintendent from the eligible list of the county, and fix his salary, which, together with his expenses, shall be a county charge, payable monthly, or, in its discretion, place such county in a district with such other counties as they deem best and appoint a district superintendent therefor. A county may be divided, but no district shall contain more than five thousand miles of public highways. Such district superintendents may be removed by the commission at its pleasure. The commission shall fix the salaries of such superintendents. Such salaries, together with expenses, shall be paid monthly in the first instance by the state treasurer upon the warrant of the comptroller and the amount thereof shall be annually apportioned by the commission among the counties contained in the district, in proportion to the number of miles of public highways of such county and in such district. The comptroller shall certify the amount so apportioned to the board of supervisors of each of such counties, and such board shall annually levy and cause to be collected as a county charge the proportionate part of such salary, and the treasurer of each such county shall pay the sum so raised into the state treasury.

By an opinion of the Attorney-General under date of August 9, 1911, it was held that the State Highway Commission is authorized under section 31 of the Highway Law to make appointments of county superintendents for full term, where the board of supervisors fails to make the appointment.

**§ 32. Removal of county superintendent.**—The commission may remove a county superintendent for inefficiency, neglect of duty or misconduct in office, upon written charges after an opportunity of being publicly heard in his defense. A copy of such charges shall be personally served upon such superintendent and he shall be given not less than five days' notice of the time and place of the hearing. If upon such hearing it appears that the charges are sustained, the commission shall remove such superintendent and forthwith serve notice thereof by mail upon the superintendent and upon the chairman and clerk of the board of supervisors of the county for which he was appointed. Such notice shall state specifically the grounds for such removal. The record of the proceedings upon such hearing shall be filed in the office of the commission. The commission shall appoint a district superintendent for such county or cause it to be added to some other district, and it shall thereupon be made subject to the jurisdiction of the district superintendent thereof until the board of supervisors shall appoint a new county superintendent to fill the vacancy caused by such removal.

Amended by L. 1910, ch. 224.

**§ 33. General powers and duties of district or county superintendents.**—The district or county superintendent appointed as provided in this article shall, subject to the rules and regulations of the commission, and subject to the supervision of the state superintendent of highways:

1. Have the general charge of all highways and bridges within his district or county and see that the same are improved, repaired and maintained, as provided by law, and have the general supervision of the work of constructing, improving and repairing bridges and town highways in his district or county.

2. Visit and inspect the highways and bridges in each town of his district or county, at least once in each year and whenever directed by the commission, and advise and direct the town superintendent how best to repair, maintain and improve such highways and bridges.

2a. If a county has any county roads as defined by subdivision three of section three the county superintendent shall on or before December first in each year prepare and submit to the board of

supervisors of such county a statement of the amount necessary to be raised by the board of supervisors for the construction, improvement and maintenance of such county roads for the ensuing year, showing the amount by towns and as a total and the location where any permanent repairs are required to be made.

3. Examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and when requested by the commission submit samples of such formations and deposits and make a written report in respect thereto.

4. Establish, or cause to be established, such grades, and recommend such means of drainage, repairs and improvements, as seem to him necessary whenever requested by the town superintendent or town board.

5. Approve plans and specifications and estimates for the erection and repair of bridges and the construction and maintenance of town highways.

6. Report to the commission annually, on or before November fifteenth in each year, in relation to the highways and bridges in his district or county, containing such matter and in such form as may be prescribed by the commission, and file a duplicate thereof with the clerk of the board of supervisors. Additional reports shall be made from time to time when required by the commission in respect to such matters as may be specified by them.

7. Whenever a public meeting for a county or district shall have been called by the commission he shall cause due notice to be mailed to each town superintendent and supervisor of the towns under his jurisdiction and give such notice by advertisement as shall be directed by the commission.

8. Inspect or cause to be inspected, if so directed by the board of supervisors, each county highway during its construction or improvement, and certify to the board of supervisors the progress of the work, and report to the commission any irregularities of the contractor or any failure on his part to comply with the terms of the contract.

9. Perform such other duties as may be prescribed by law, or the rules and regulations of the commission.

Amended by L. 1911, ch. 646.

**Rules and regulations of commission.** It is provided that the powers and duties herein conferred or imposed upon the district or county superintendents

shall be exercised or performed subject to rules and regulations of the commission. By § 15, subd. 2, *ante*, the commission is authorized to prescribe rules and regulations fixing the duties of district and county superintendents, "not inconsistent with law."

**Gravel and stone deposits.** The object of requiring county and district superintendents to report to the commission as to deposits and formations of gravel and stone in their counties or districts, is to inform the commission of the availability of good material for highway construction so as to enable them to determine the kind and cost of material to be used in the construction of State and county highways in such localities.

Public meetings are called by the commission pursuant to § 15, subd. 9, *ante*, and town superintendents are required to be present, under § 47, subd. 10, *post*.

Inspection of county highways during construction is required of county and district superintendents, only when requested by boards of supervisors, in which even they are representatives of the county for the purpose of ascertaining whether the county is getting what it pays for. Under the old law the town and county had no opportunity to be heard during the construction of a highway, and in practice the highway was accepted solely upon the determination of the State Engineer although the localities were required to pay one-half of the cost. When such a highway is properly completed it is provided in section 134 that the board of supervisors is to accept the same, and this inspection will aid the board in arriving at a proper determination.

#### ARTICLE IV.

##### Town Superintendent; General Powers and Duties.

###### Section 40. Election of town superintendent of highways.

41. Submission of proposition for appointment of town superintendent.
42. Term of office of town superintendent.
43. Vacancies; office of highway commissioner abolished.
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**Section 61. Trees and sidewalks.**

62. Expenditures for sidewalks.
63. Allowance for shade trees.
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65. Compensation for watering troughs.
66. Credit on private road.
67. Neglect or refusal to prosecute.
68. Erection of guide boards.
69. Measurement of highways and report.
70. Application for service of prisoners.
71. Construction and repair of approaches to private lands.
72. Unsafe toll bridge.
73. Actions for injuries to highways.
74. Liability of towns for defective highways.
75. Action by town against superintendent.
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78. Adoption of labor system for removing snow.
79. Assessment of labor for the removal of snow.
80. Lists of persons assessed for removal of snow.
81. District foremen; return and levy of unworked tax.
82. Appeals by nonresident; certain assessments to be separate; tenant may deduct assessment.

**§ 40. Election of town superintendent of highways.**—At the biennial town meeting held next after the taking effect of this chapter, there shall be elected in each town a town superintendent of highways. A successor to the town superintendent, so elected, shall be elected at each biennial town meeting held thereafter in such town, unless the town shall have adopted as provided in section 41 a resolution that thereafter the town superintendent shall be appointed by the town board.

Every elector of a town is eligible to the office of town superintendent. Town Law, § 80.

A town superintendent must be a resident of the town. A town superintendent is required to take constitutional oath of office. The town clerk is to notify the town board of failure of town superintendent to take and file oath of office. The neglect or failure to file oath of office within the required time vacates office.

**§ 41. Submission of proposition for appointment of town superintendent.**—Upon the written request of twenty-five taxpayers of any town, made and filed as provided in the town law, the electors thereof may, at a special or biennial town meeting, vote by ballot upon a proposition providing for the appointment of a town superintendent in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the town board of the town shall, upon the

expiration of the term of office of the elected town superintendent, appoint a town superintendent therefor, who shall take and hold office for the term hereinafter prescribed.

**§ 42. Term of office of town superintendent.**—The term of office of a town superintendent elected or appointed, as provided in this article, shall be two years. If such town superintendent be elected at a town meeting held at the time of a general election, his term shall begin on the Thursday succeeding his election, or as soon thereafter as he shall have been officially notified of his election and shall have duly qualified. If such town superintendent shall have been elected at a town meeting held at any other time, his term of office shall begin on the first day of November succeeding his election. If such town superintendent shall have been appointed pursuant to a proposition adopted, as provided in the preceding section, his term shall likewise begin on the first day of November, and the town board shall meet prior to that day, for the appointment of such town superintendent.

**§ 43. Vacancies; office of highway commissioner abolished.**—Vacancies in the office of town superintendent shall be filled for the balance of the unexpired term. The office of highway commissioner in each town is hereby abolished, to take effect on and after November first, nineteen hundred and nine. Where the office of highway commissioner shall become vacant by expiration of term or otherwise, after the taking effect of this chapter, and prior to the said first day of November, nineteen hundred and nine, such vacancies shall be filled for a term to expire on such date. Highway commissioners in office when this chapter or any section hereof takes effect shall exercise the powers and perform the duties hereby conferred and imposed upon town superintendents until the said first day of November, nineteen hundred and nine, and until their successors shall have duly qualified, whereupon such powers and duties shall cease and determine.

**§ 44. Deputy town superintendent.**—The town board of a town may, in its discretion, upon the written recommendation of the town superintendent, appoint a deputy town superintendent, to be nominated by such town superintendent, to assist him in the performance of his duties. Such deputy superintendent shall act as such during the pleasure of the town superintendent.

**§ 45. Compensation of town superintendent and deputy.**—The town board shall fix the compensation of such superintendent and his deputy, if one be appointed, which shall not be less than two nor more than five dollars per day. Such town superintendent

and his deputy, if any, shall be paid the actual and necessary expenses incurred by them in the performance of their duties. Such compensation may be paid by the supervisor monthly, in advance of audit, from moneys levied and collected for such purpose, on accounts duly verified in the same manner as town accounts are required by law to be verified. Such accounts for compensation, together with accounts for expenses incurred by such town superintendent and his deputy, if any, verified as above provided, shall be subject to audit by the town board at its meeting held annually for the audit of accounts of town officers, and the balance due, as finally audited by the town board, shall be paid by the supervisor to such town superintendent, or deputy, if any, from funds available therefor.

By an opinion of the Attorney-General under date of February 27, 1909, it was held that the auditing of accounts against the town, growing out of the highway work, will devolve upon the board of town auditors, in those towns wherein such boards are elected in all of those cases where auditing of such accounts are required.

**§ 46. Removal of town superintendent.**—A town superintendent may be removed by the town board upon written charges preferred by the commission, or by the district or county superintendent, for malfeasance or misfeasance in office. Such charges shall be presented in duplicate to the town clerk, one of which shall be filed in his office, and the other shall be served by him personally upon the town superintendent, together with a notice directing him to appear before the town board at a time and place stated therein. Such service shall be made at least five days prior to the time specified in such notice. The town board shall convene for the purpose of considering such charges within ten days after the filing thereof with the town clerk. The town board shall hear evidence in support and in defense of such charges and after such hearing shall enter an order in the office of the town clerk either sustaining or dismissing such charges. The entry of an order sustaining the charges shall operate as a removal and the town board shall appoint another person to fill the vacancy caused thereby. The person so appointed shall hold office for the unexpired term or until the entry of a final order of a court of competent jurisdiction determining that the original town superintendent was wrongfully and illegally removed and directing his reinstatement. If the charges are dismissed, the town board shall notify the commission and the district or county superintendent of such fact. The town board shall also notify the commission and the district or county superintendent of the name

of the person appointed to fill the vacancy caused by the removal of such town superintendent. An appeal may be taken by the commission or district or county superintendent, or by the town superintendent, from the order of the town board, to the county court by the filing of a notice of such appeal in the office of the town clerk within thirty days after the entry of such order. A copy of such notice of appeal shall be served personally or by mail upon the adverse party. Upon such appeal the county court shall consider the charges presented to the town board, and may hear evidence in support and in defense thereof. After such hearing the court shall make an order either affirming or reversing the order of the town board. A copy of such order shall be entered in the office of the town clerk. If the order reverse an order dismissing the charges, it shall direct the town board to remove the town superintendent and appoint a person to fill the vacancy caused thereby, within the time specified therein; if it reverse an order sustaining such charges, it shall direct the reinstatement of the town superintendent removed, to take effect upon the filing of the copy in said town clerk's office.

§ 47. General powers and duties of town superintendent.—The town superintendent shall, subject to the rules and regulations of the commission, made and adopted as provided in this chapter:

1. Have the care and superintendence of the highways and bridges in the town except as otherwise specially provided in relation to incorporated villages, cities and other localities.

2 Cause such highways and bridges to be kept in repair, and free from obstructions caused by snow and give the necessary directions therefor, and inspect the highways and bridges within the town, during the months of April and October of each year, or at such other time as the district or county superintendent may prescribe; and may cause to be constructed and repaired any public roads, walks, places and avenues on any island or part of an island in his town, although such roads, walks, places and avenues are narrower than the width of highways required by statute.

Amended by L. 1914, chap. 84.

3. Divide the town into as many sections as may be necessary for the proper maintenance and repair of the highways therein, and the opening of highways obstructed by snow.

**Obstructions caused by snow.** The duty of keeping highways free from obstructions caused by snow is made by this subdivision as obligatory upon the town superintendent the same as keeping them in repair.

By an opinion of the Attorney-General under date of December 23, 1912, it was held that the removal of an obstruction in the highway caused by snow, cannot be said to be a repair or a maintenance of the highway. It is simply an act required to keep the highway open, and is not caused by any defect or injury to the highway itself, and cannot be classed as a maintenance or repair which the Highway Commission is bound to provide for under section 170 of the Highway Law, and such obstruction should be removed by town superintendents.

4. Employ such persons with teams and implements, as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the town board, as hereinafter provided, and provide for the organization and supervision of the persons so employed. He shall file a list of the names of the persons so employed, with the compensation paid to each, and the capacity in which they were employed in the office of the town clerk.

**Payment of laborers.** When an agreement has been entered into between the town board and the town superintendent, as provided in section 105, *post*, authorizing the expenditure of highway moneys at such places and in such manner as may be specified in such agreement, the town superintendent is authorized to employ such labor as may be necessary in making such repairs and improvement, and the wages are to be paid by the supervisor on the written order of the town superintendent.

Weekly or semi-monthly pay days should be established and provision made by the town superintendent and supervisor for the issue and payment of town highway orders upon such day.

5. Construct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.

Ditches, culverts and waterways in State and county highways are required to be kept open and free from obstructions at all times, by the town superintendent. See section 53, *post*. It is made unlawful for the owner or occupant of lands adjoining a highway to fill up any ditch or place any material of any kind or character therein so as to in any manner obstruct or interfere with the purposes for which it was made. See section 71, *post*.

6. Cause loose stones lying in the beaten track of every highway within his town to be removed at least three times each year between the first day of April and the first day of December. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought back into the track by road machines or other implements used in repairing such highways.

**Injurious substances in highways.** A person who willfully throws, drops or places, or causes to be thrown, dropped or placed, upon any road, highway, street or public place, any glass, nails, pieces of metal or other substances which might wound, disable or injure any animal is guilty of a misdemeanor. *Penal Law, § 191.*

7. Cause noxious weeds growing within the bounds of the highway to be cut and removed, at least twice each year, once between the first and thirtieth day of July, and once between the first and thirtieth day of September. He shall also cause all briars and brush within the bounds of the highway to be cut and removed once between the first and thirtieth day of September in each year, as provided by section fifty-four of this chapter, unless otherwise directed by the commission.

Subd. 7, amended by L. 1910, ch. 567. In effect June 21, 1910.

8. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered on record in the town clerk's office.

9. Inspect all highways which are to be constructed or improved as state or county highways, when directed by the district or county superintendent, for the purpose of securing preliminary information to be used in preparing the plans and specifications for such highways, and mark or in some substantial manner designate the portions of such highways which may need special care and attention. He shall report to the district or county superintendent the condition of such highways and submit therewith such recommendations in respect thereto as may seem expedient. The district or county superintendent may require additional reports in respect to such highways whenever it seems to him to be necessary.

10. Attend public meetings called by the commission, held within the county, after receiving notice thereof from the district or county superintendent, and his expenses necessarily incurred thereby shall be a town charge.

11. Cause the monuments erected, or to be erected, as the boundaries of highways, to be kept up and renewed so that the extent of such highway boundaries may be publicly known, and erect and establish such new monuments as may be required by the district or county superintendent.

12. Collect all penalties prescribed by this chapter.

13. Report annually on such date as may be prescribed by the commission, prior to November fifteenth, to the district or county superintendent, in relation to the highways and bridges in his town, containing the matter and in the form to be prescribed by the commission.

14. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the commission, including the powers and duties heretofore exercised or performed by highway commissioners.

See Attorney-General's Report, 1911, page 325.

**§ 48. Contracts for the construction of town highways and bridges.** The town board of any town may provide that the construction of new highways and bridges, or the permanent improvement or reconstruction of existing highways and bridges, the cost of which will exceed five hundred dollars, shall be done under contracts. All such contracts shall be awarded by the town superintendent, in accordance with estimates, plans and specifications to be furnished by the district or county superintendent, or by the commission, as provided in this chapter, to the lowest responsible bidders, after advertisement once a week, for three consecutive weeks, in a newspaper published in the town where the work is to be performed, or if no newspaper is published therein, in a newspaper published at some other place in the county, having the largest circulation in said town. All bids for such work shall be opened in public and shall be filed in the office of the town clerk. No such contract shall be awarded, unless it be approved by the district or county superintendent, as to its form and sufficiency. The person to whom such contract is awarded shall execute a bond to the town, in a sum equal to the amount of the contract, with two or more sureties to be approved by the town board, conditioned for the faithful compliance with the terms of the contract, and the plans and specifications and for a payment of all damages which may accrue to the town, because of a violation thereof. When such work is completed pursuant to the terms of such contract, and the plans and specifications therefor, and accepted by the district or county superintendent and town board, as being in accordance therewith, the cost of the work under the contract shall be paid out of moneys available therefor, in the same manner as other highway expenses. Payments made under such contract shall be upon certificates issued to the contractor by the district or county superintendent, to the effect that the work has been done under and in accordance with the terms of such contract, and the plans and specifications. All work done under any such contract shall be under the supervision of the district or county superintendent, or some person designated by him.

The town superintendent shall file all contracts, awarded under this section or as provided in this chapter, for the construction, improvement or repair of town highways and bridges, with the town clerk of the town within ten days after their execution.

Amended by L. 1914, ch. 413.

By an opinion of the Attorney-General, dated July 12, 1913, it was held that his section simply applies to contracts that exceed \$500. If done by contract, the section provides the method which shall be followed in letting the contract. There is no provision in the law which prohibits the doing of the work necessary for the improvement or repairs of highways by contract.

Section 105 provides that the town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which money shall be expended. If the town board and the superintendent agree that the money shall be expended by contract irrespective of the amount involved, they may do so.

**§ 49. Machinery, tools and implements.**—The town superintendent may, with the approval of the town board, purchase for the use of the town, stone crushers, steam rollers, traction engines, road machines for grading and scraping, tools and other implements, subject to the limitations prescribed in section ninety-four, which shall be paid for from moneys levied and collected or from the proceeds of bonds issued and sold for such purposes as provided in this chapter. No contract for the purchase of stone crushers, steam rollers or traction engines shall be valid, unless the district or county superintendent shall have approved thereof and endorsed his approval upon such contract. All road machines, stone crushers, steam rollers, tools and other implements owned either by the town or the highway districts therein, when this chapter takes effect, shall be used by the town superintendent in such manner and at such places in such town as he shall deem best. They shall be under the control of the superintendent and be cared for by him at the expense of the town. The town superintendent shall annually make a written inventory of all such machinery, tools and implements, indicating each article and stating the value thereof, and the estimated cost of all necessary repairs thereto, and deliver the same to the supervisor of the town on or before October thirty-first in each year. He shall at the same time file with the town clerk his written recommendations as to what machinery, tools and implements should be purchased for the use of the town, and the probable cost thereof. The town superintendent shall provide a suitable

place for housing and storing all machinery, tools and implements owned by the town and cause the same to be stored therein, when not in use. Where there is an incorporated village constituting a separate road district, wholly or partly in a town which has purchased a stone crusher, steam roller or traction engine, the town board of such town may permit the use thereof by such village upon such terms as may be agreed upon.

**§ 50. Town superintendent may hire machinery.**—The town superintendent may, with the approval of the district or county superintendent, lease or hire stone crushers, steam rollers and traction engines at a rate to be approved by the town board, which shall not exceed ten dollars for a stone crusher and steam roller, and eight dollars for a traction engine, for each day such stone crusher, steam roller or traction engine is actually used upon the highways. The expense thereof shall be paid by the supervisor, upon the written order of the town superintendent, out of moneys received by him, as provided in this chapter, for the repair and improvement of highways.

**§ 51. Purchase of gravel and stone.**—The town superintendent may, with the approval of the town board, purchase of the owner of any gravel bed or pit, or stone quarry within the town, gravel or stone for the purpose of grading, repairing or otherwise improving the highways of the town, at a price per cubic yard to be approved by the town board. If such town superintendent cannot agree with any such owner for the purchase of such gravel or stone, he may, with the approval of the town board, acquire by condemnation the right to take and use such gravel or stone, and to remove the same from such bed, pit or quarry, for the purpose of grading, repairing or otherwise improving such highways, together with the right of way to and from such bed, pit or quarry, for the purpose of such removal. No such gravel or stone shall be so taken by condemnation within five hundred feet of any house or barn, or from any lawn, orchard or vineyard. The purchase price of such stone or gravel and the damages awarded in such condemnation proceedings, together with the costs and expenses thereof, shall be a town charge and paid from moneys levied and collected therefor, as provided by law. If the town shall abandon for the period of three years any right acquired under this section to take and use the gravel or stone from any such bed, pit or quarry, for a period of three years, or if the superintendent shall cease to use the same for the purposes for

which it was acquired, the right thereto shall cease, and the ownership thereof shall revert to and become vested in the owner of such bed, pit or quarry, or his heirs or assigns.

**§ 52. Obstructions and their removal.**— Obstructions, within the meaning of this section, shall include trees which have been cut or have fallen either on adjacent lands or within the bounds of the highway, in such a manner as to interfere with public travel therein; limbs of trees which have fallen within the highway, or branches of trees overhanging the highways so as to interfere with public travel therein; lumber, wood or logs piled within the bounds of the public highway; machines, vehicles and implements abandoned or habitually placed within the bounds of the highway; fences, buildings or other structures erected within the bounds of the highway; earth, stone or other material placed in any ditch or waterway along the highway; telegraph, telephone, trolley and other poles, and the wires connected therewith, erected within the bounds of the highway in such a manner as to interfere with the use of the highway for public travel.

It shall be the duty of each owner or occupant of lands situate along the highway, to remove all obstructions within the bounds of the highway, which have been placed there, either by themselves or by their consent. It shall be the duty of all telephone, telegraph, electric railway and other electrical companies, to remove and reset telephone, telegraph, trolley and other poles and the wires connected therewith, when the same constitute obstructions to the use of the highway by the traveling public. If temporary obstructions such as trees, lumber, wood, logs, machinery, vehicles and similar obstructions are not removed within five days after the service of a notice, personally or by mail, upon such owner or occupant, requesting the same to be done, the town superintendent shall remove such obstruction. And if permanent obstructions, including, among others, telegraph, telephone, trolley and other poles and wires connected therewith, are not moved and reset within thirty days, the town superintendent shall move and reset such poles and wires. The expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner, occupant or company, and levied and collected, as provided in section fifty-five.

Amended by L. 1914, ch. 196.

By an opinion of the Attorney-General under date of March 21, 1913, it was held the right which telephone and telegraph companies derive by virtue of section 102 of the Transportation Corporations Law to construct and maintain poles and wires in rural highways is not absolute or unqualified, but subject to the rule that the lines must be so located as not unnecessarily to obstruct the public travel. Accordingly, where the plans for the improvement of any such highway are such as to require the relocation of the poles and wires of telephone or telegraph companies, it is incumbent upon the companies at their own expense to relocate the same. It seems, however, that it is incumbent upon the State or county, as the case may be, to afford the company a new right of way within the limits of the improved highway.

§ 53. The town superintendent shall cause the removal of obstructions caused by snow on state and county highways within the town. He shall also, during such time as patrolmen are not employed thereon, cause snow and ice to be removed from the culverts and waterways of such highways when necessary, and the cost thereof shall be paid from the miscellaneous or other town funds.

Amended by L. 1914, ch. 197.

§ 53-a. **Temporary obstruction of highways.**—The necessary obstruction of a highway by the removal of buildings or other temporary obstruction shall only be allowed if a highway other than a state or county highway under a permit granted by the county superintendent upon the written request of the town superintendent, and if a state or county highway under a permit granted by the commissioner of highways.

Added by L. 1910, ch. 567 and amended by L. 1913, ch. 80.

§ 54. **Removal of noxious weeds and brush within the highways, and of obstructions caused by snow.**—It shall be the duty of the owner or occupant of lands situated along the highway to cut and remove the noxious weeds growing within the bounds of the highway, fronting such lands, at least twice in each year, once in the month of June, and once in the month of August. It shall be the duty of such owner or occupant to cut and remove all briars and brush, growing within the bounds of the highway, fronting such lands, once in the month of August in each year. It shall also be the duty of such owner or occupant to remove brush, shrubbery and other obstructions within the bounds of the highway, causing the drifting of snow upon said highway, before the first day of November in each year. If such owner or occupant fails to cut or remove such weeds or brush, or to remove such brush, shrubbery or

other obstructions, causing the drifting of snow, as provided herein, the town superintendent of the town in which said lands are situated shall cause the same to be done and the expense thereby incurred shall be paid in the first instance out of moneys levied and collected and available therefor, and the amount thereof shall be charged against such owner or occupant, and levied and collected, as provided in section fifty-five. The town board of any town may, by resolution, determine that the work required by this section to be done by the owner or occupant of lands situated along the highways shall be done by the town superintendent. If such resolution be adopted such work shall be done by the town superintendent at the times prescribed by this section, the cost thereof shall not be charged or assessed against the owner or occupant but shall be a town charge, and there shall be annually raised in such town in addition to the other moneys raised for highway purposes, a sum sufficient to pay such expense.

Added by L. 1911, ch. 154.

By an opinion of the Attorney-General under date of October 25, 1910, it was held that where a highway has been constructed entirely across one man's land, his title extending to the line fence and including the roadway, that the obligation to cut the weeds and brush upon both sides of the road was upon him, and that in case he refuses or neglects to cut such weeds and the work is done by the town superintendent, that portion of the assessment for cutting the weeds and brush on the farther side shall lie against such owner, and assuming that the title to the land on either side of the highway runs only to the highway fence and includes no portion of the highway, the duty is likewise imposed upon the abutting owner who cuts the weeds and brush.

**§ 55. Assessment of cost against owners and occupants.—** The town superintendent shall assess the cost of,

1. Removing obstructions and moving and resetting poles and wires, pursuant to section fifty-two.

2. Cutting and removing noxious weeds, briars and brush and removing brush, shrubbery and other obstructions within the highways, causing the drifting of snow, pursuant to section fifty-four, against the owner, occupant or company neglecting to perform the duty imposed by the sections above referred to. Such town superintendent shall serve personally or by mail upon such owner, occupant or company, a written notice, stating that at a time and place specified therein, he will assess such cost against the owner, occupant or company neglecting to perform such duty. Such notice shall be served at least eight days previous to the time speci-

fied therein. If directed against a company, it may be served upon it at its principal place of business, or upon an agent of the company within the town. At the time and place so specified, he shall hear the parties interested, and shall thereupon complete the assessment, stating therein, the name of each owner, occupant or company, and the amount assessed against him or it, and shall return such assessment to the town clerk who shall present the same to the town board of his town, at its meeting held on the Thursday preceding the annual meeting of the board of supervisors. Such town board shall certify such assessment to the board of supervisors who shall cause the amount stated therein to be levied against such owner, occupant or company and any uncollected tax shall be a lien upon the land affected. The amount so levied shall be collected in the same manner as other taxes levied by such board, and shall be paid to the supervisor of the town, to be applied in reimbursing the fund from which such cost was defrayed.

**Abutting owners to cut weeds, brush, etc.** A person whose lands about the highway, whether the line of his land is at the edge or in the center of the highway, is required by statute to cut, destroy and remove brush and weeds from the highway surrounding such lands, and where different persons own the land each should cut the brush, etc., to the center of the line of the highway regardless of whether the center line of the highway is the boundary line of the lands.

See Attorney-General's opinion October 25, 1910.

**§ 56. Wire fences to prevent snow blockades.**—The town superintendent, with the consent of the town board, may purchase wire for fences to be erected for the prevention of snow blockades, and the said town superintendent is hereby authorized to contract with the owners of the lands lying along the highways of their respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways and the replacing of such fences with wire fences. He may contract to deliver to such land owners fence wire to be used in the construction of such fences, without charge to said land owners, at the place of purchase, but he shall not agree to pay any part of the cost of the removal or construction called for by said contracts, or to make any payment to said land owners, as a compensation for the construction of fences or for posts. The amount to be expended for the purchase of such wire shall not exceed the sum of three hundred dollars in any one year, and such amount shall be included in the estimate for expendi-

tures for removal of obstructions caused by snow, and other miscellaneous purposes, and paid from the money levied and collected therefor. The fences to be built, under the provisions of this section, shall be of not less than four strands of wire, nor more than nine strands, in the discretion of the town superintendent, approved by the town board, and the construction of said fences and their distance apart, shall be such as said town superintendent shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highway, it shall be the duty of the owner or owners of said fence or fences to immediately repair or replace the same. Whenever the town superintendent shall contract for the removal of any fence, under the provisions of this section, he shall file in the office of the town clerk a description of that portion of the highway to which said contract shall apply, and thereafter it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow. In no case shall the town superintendent approve of or permit the use of barb wire for such fences.

**§ 57. Entry upon lands by town superintendent.**—The town superintendent may, when directed by the district or county superintendent, and when authorized by the town board, enter

1. Upon any lands adjacent to any of the highways in the town, for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of such highways.

2. Upon the lands of any person adjoining rivers, streams or creeks, to drive spiles, throw up embankments and perform such other labor as may be necessary to keep such rivers, streams or creeks within their proper channels, and to prevent their encroachment upon highways or abutments of bridges.

3. Upon the lands adjoining a highway which, during the spring freshets or at a time of highwater are subject to overflow from such rivers, streams or creeks, to remove or change the position of a fence or other obstruction preventing the free flow of water under or through a highway, bridge or culvert, whenever the same may be necessary for the protection of such highway or bridge.

4. Upon any lands adjacent to highways to remove any fence or other obstruction which causes snow to drift in and upon such highways, and erect snow fences or other devices upon such lands to prevent the drifting of snow in or upon such highways.

**§ 58. Damages to owners of lands.**—Where lands are entered upon under the provisions of the preceding section, the town superintendent shall agree with the owner of such lands, subject to the approval of the town board, as to the amount of damages, if any, sustained by such owner in consequence of such entry in performance of the work authorized by such section, and the amount of such damages shall be a town charge. If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid in the manner that damages are so ascertained, determined and paid, where new highways are laid out and opened and the town superintendent and land owners are unable to agree upon the amount thereof.

**§ 59. Damages for change of grade.**—In any town in which a town highway shall be repaired, graded and macadamized from curb to curb by the authorities of the town the owner or owners of the land adjacent to the said highway shall be entitled to recover from the town the damages resulting from any change of grade. A person claiming damages from such change of grade must present to the town board of such town a verified claim therefor within sixty days after such change of grade is effected. The board may agree with such owner upon the amount of damages to be allowed him. If no agreement be made within thirty days after the presentation of the claim, the person presenting it may apply to the supreme court for the appointment of three commissioners to determine the compensation to which he is entitled. Notice of the application must be served upon the supervisor of the town at least ten days before the hearing thereof. All proceedings subsequent to the appointment of commissioners shall be taken in accordance with the provisions of the condemnation law so far as applicable. Such town board, or such commissioners, shall, in determining the compensation, consider the fair value of the work done, or necessary to be done, in order to place the claimant's lands, or buildings, or both, in the same relation to the changed grade as they stood to the former grade, and make awards accordingly, except that said board or said commissioners may make an allowance for benefits derived by the claimant from such improvement. The amount agreed upon for such damages, or the award therefor together with the costs, if any, allowed to the claimant, shall be a charge against such

town and the supervisor shall pay the same, if there be sufficient funds in his hands available, and if not, the town board shall borrow money for the payment thereof, as provided in section ninety-seven, or issue certificates of indebtedness therefor, as provided in section ninety-six. Bonds of the town to raise the money necessary to make such payment, and such bonds or such certificates of indebtedness shall bear a rate of interest not exceeding five per centum per annum payable semi-annually. Such bonds shall be in the same form, and shall be issued and sold in the same manner as other town bonds.

By an opinion of the Attorney-General under date of October 1, 1909, it was held that the only provision of the Highway Law relating to damages for change of grade that he was able to find was section 59, and that section only relates to damages occasioned by the improvement of a town highway and requires for the determination and recovery of such damages from the town, but this section cannot be stretched to cover a State or county highway that has been improved, graded or macadamized by the State Commission.

At common law, an owner of land abutting upon a public highway could not recover for any damages sustained by him on account of the change of a grade by the officers charged with the right or duty to make changes. *Smith v. Boston A. R. Co.*, 91 N. Y. Supp. 412-414; *Radcliff's Executors v. The Mayor, etc., of Brooklyn*, 4 N. Y. 195; *Conklin v. N. Y. O. & W. Railway Co.*, 102 N. Y. 107; *Fries v. N. Y. & Harlem R. R. Co.*, 169 N. Y. 270; *Muhlker v. N. Y. & Harlem R. R. Co.*, 173 N. Y. 549-557.

It is held in several cases that where there is no statutory provision for the adjustment and payment of damages to the abutting owner, he cannot recover resultant or consequential damages on account of any change of grade or other work within a public street or highway; and Judge O'Brien in the prevailing opinion in *Fries v. N. Y. & Harlem R. R. Co.*, *supra*, at page 276, uses the following language:

"The law is well settled in this State that where the property of an abutting owner is damaged or even his easements interfered with in consequence of the work of an improvement in a public street conducted under a lawful authority, he is without remedy or redress, even though no provision for compensation is made in the statute. Whatever detriment the improvement may be to the abutter in such cases is held to be *damnum absque injuria*."

Provision is made for the recovery of damages by the abutting owners against a town in case of injury resulting from the change of grade in the town highway as hereinbefore stated, but I am unable to discover any similar provision making the State or a county liable for injuries caused to adjacent owners for changes in grade caused by the construction or improvement of State or county highways, and I must, therefore, advise that any damages which may result to the adjoining owners, if any, in such work, is not recoverable and that such owners have no remedy against either the contractor, city, county or town.

By an opinion of the Attorney-General dated August 8, 1913, where, in constructing a county highway, the Department of Highways made slight changes in the grade resulting in a perceptible increase in the flow of surface water on land of an adjacent owner, it was held that, in constructing highways, the State Department of Highways may protect the work from surface waters without giving private owners ground for complaint, even though such water is caused to flow on their lands in a larger quantity than before.

The Department may not, however, collect a material body of water and conduct it by an artificial channel and discharge it in a body upon private property. See *Lynch v. Mayor*, 76 N. Y. 60, and *Rutherford v. Village of Holley*, 105 N. Y. 632.

**§ 59-a. Interest on damages for change of grade.**— Whenever awards shall be lawfully made, pursuant to any statute of this State, for damages sustained by real estate or any improvements thereon by reason of any change of grade of any street, avenue or road in front thereof, the award for the principal amount of damages sustained shall bear interest at the rate of six per centum per annum from the time of the change of grade to the time of the payment of the award.

Added by L. 1910, ch. 701. In effect June 25, 1910.

**§ 60. Drainage, sewer and water pipes, cattle passes or other crossings in highways.**— The town superintendent may, with the consent of the town board, upon the written application of any resident of his town or a corporation, grant permission for an overhead or underground crossing, or to lay and maintain drainage, sewer and water pipes under ground within the portion therein described of a town highway. If the highway is a state or county highway such permission shall be granted with the consent of the county or district superintendent instead of the town board. Permission shall not be granted for the laying and maintaining of such pipes under the travelled part of the highway, except across the same, for the purposes of sewerage and draining swamps or other lands, and supplying premises with water. Such permission shall be granted upon the condition that such pipes and hydrants or crossings shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before the laying of said pipes, or construction of such crossings, and that such applicant will keep such pipes and hydrants or crossing in repair and save the town harmless from all damages

which may accrue by reason of their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway. The permit of the town superintendent, with the consent of the town board or county or district superintendent, and the acceptance of the applicant, shall be executed in duplicate, one of which shall be filed in the office of the town clerk and the other in the office of the district or county superintendent. In case the applicant shall fail to make any of the repairs required to be made under the permit, they may be made by the town superintendent at the expense of the applicant, and such expenses shall be a lien, prior to any other lien, upon the land benefited by the use of the highway for such pipes, hydrants or structures. The town superintendent may revoke such permit upon the applicant's failure to comply with any of the conditions contained therein.

In the case of state or county highways as described in section 3 of the Highway Law, it has been held by the Attorney-General that application and permit must be made and issued under section 146 as well as section 60; that there must be concurrent action even to the granting of the permits under local by-laws and ordinances. He has also held that every highway that has been or may be improved as a state or county highway, the consent of the Highway Commission shall be obtained, and such consent shall be given under such conditions as the Highway Commission may see fit to prescribe. (See opinions by the Attorney-General, June 2, 1909; August 16, 1910; January 17, 1913.)

**§ 61. Trees and sidewalks.**—The town superintendent may, by an order in writing, approved by a majority of the members of the town board, authorize the owners of property adjoining the highways, at their own expense, to locate and plant trees and locate and construct sidewalks along the highways, in conformity with the topography thereof, which order with a map or diagram, showing the location of the sidewalk and tree planting, certified by the town superintendent, shall be filed in the office of the town clerk, within ten days after the making of the order.

**Willful injury to shade trees.** A person who willfully cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the State, is guilty of a misdemeanor. Penal Law, § 1452.

**Rights of electric corporations in respect to shade trees.** In stringing its wires a corporation has no right to cut branches of trees belonging to abutting owners, unless such course is demanded by an existing necessity which cannot be avoided by insulating the wires or by employing other practical means which may be more expensive and less convenient. *Van Scien v.*

**Jamaica Electric Light Co., 45 App. Div. 1, 61 N. Y. Supp. 210 (1899).** The right to the protection of shade trees vested in the owners of adjoining lands is subservient to the proper and legitimate use of the highway by the public. The question as to whether or not the use of public highways in the country by electric lighting companies is within the proper public use of such highways is, in all cases, to be determined by the necessity of the light for the proper use of such highways. **Farmer v. Larchmont Electric Co., 158 N. Y. 231 (1899).**

**§ 62. Expenditures for sidewalks.**— The town superintendent of any town may, with the consent of the town board, maintain and repair existing sidewalks in such town, and the expense thereof shall be a town charge. The town board of any such town may on the petition of not less than twenty-five taxpayers of the town, by resolution, direct the town superintendent to construct a sidewalk along a described portion of any highway of the town, in a manner and not exceeding an expense to be specified in the resolution, and the expense of constructing such sidewalk shall be a town charge, and shall be paid in the same manner as other town charges.

Chapter 139 of the Laws of 1911, amends the Town Law in relation to the establishment and maintenance of sidewalks outside of incorporated cities and villages, and provides for the payment of sidewalk improvement by towns.

**§ 63. Allowance for shade trees.**— There shall be allowed by the town superintendent, with the consent of the town board, to each such owner or occupant, who shall set out or transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or nut bearing trees suitable for shade trees, in conformity with the preceding section, the sum of one dollar for each three living trees so set out or transplanted, to be paid by the supervisors to such owner or occupant, upon the order of the town superintendent out of moneys levied and collected for miscellaneous purposes. Such allowance shall only be made for trees so set out or transplanted during the preceding year, and living and well protected from animals at the time of the allowance. Such trees shall be set out or transplanted not more than eight feet from the outside line of any highway three rods wide, and not more than one additional foot distant therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees. Trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner.

**§ 64. Custody of shade trees.**—The town superintendent shall have the full control of all shade trees in the public highways of the town, but not within the limits of an incorporated village, and shall prosecute complaints for malicious injury to, or unlawful acts concerning, public shade trees. Upon the recommendation of the town superintendent, the town board may, by resolution, appropriate a sum, not exceeding two hundred dollars, to be known as the "Shade Tree Fund." Such fund shall be placed in the hands of the supervisor as custodian and shall be expended by him upon the written order of the town superintendent, for the setting out and preservation of shade trees along the highways in such town.

**§ 65. Compensation for watering troughs.**—The town superintendent may, with the consent of the town board, authorize the owner or occupant of lands to construct and maintain a watering trough beside the public highway, to be supplied with fresh water, the surface of which shall be three or more feet above the level of the ground and easily accessible for horses with vehicles, but when possible, all such watering troughs shall be constructed on the lower side of the highway. Such watering trough shall be maintained by such owner or occupant and kept supplied with fresh water. The town superintendent shall annually give a written order upon the supervisor for three dollars to be paid to such owner or occupant by the supervisor, for maintaining such watering trough, and keeping the same supplied with fresh water, out of moneys levied and collected for miscellaneous purposes.

**§ 66. Credit on private road.**—Any person living upon a private road may be credited on account of his highway taxes in any year an amount equal to the value of the work which the town superintendent may deem necessary to be done in such year upon such road. The town superintendent shall issue to him a statement containing the name of the person, the location of the road, the amount of work so deemed necessary to be done, and the value thereof. Such statement shall be presented to the town board at its annual meeting for the audit of town accounts, and if approved by such board, and such work shall have been done, an order shall be issued directing the supervisor to pay the sum specified in such statement to the person therein named, or his assignee, out of moneys in the hands of the supervisor available for highway purposes. The amount so paid in any year shall not exceed the amount payable by the person named in such state-

ment on account of moneys levied in such town for the repair and improvement of highways as provided in this chapter. This section shall not apply to private roads or rights of way over lands of the owner thereof used by him for his own convenience.

**§ 67. Neglect or refusal to prosecute.**— If the town superintendent shall neglect or refuse to prosecute for any penalty, knowing the same to have been incurred, he shall be liable to a penalty of ten dollars for every such neglect or refusal, which shall be recovered by action in the name of the town, by the supervisor, or by any taxpayer of the town who shall indemnify the town for the costs and expense of the action, in such manner as the supervisor may approve.

**§ 68. Erection of guide boards.**— The town superintendent may, with the consent of the town board, cause guide posts with proper inscriptions and devices to be erected at the intersections of such highways therein, as may be necessary, which shall be kept in repair by him at the expense of the town. Upon written application to him, of five resident taxpayers of any town or twenty resident taxpayers of the county in which such town is located, requesting the erection of one or more guide boards at the intersection of highways in such town, it shall be his duty to cause to be erected at the intersections mentioned in such application, such guide boards indicating the direction, distances and names of the towns, villages or cities to or through which such intersecting highways run. Such application shall designate the highway intersections at which such guide boards are requested to be erected, and may contain suggestions as to the inscriptions and devices to be placed upon such boards. The cost of the erection and maintenance of such boards shall be a town charge. If the town superintendent refuses or neglects for a period of sixty days after receiving such application to comply with the request contained therein, he shall, for such neglect or refusal, forfeit to the town, the sum of twenty-five dollars, to be recovered by the supervisor in the name of the town and the amount so recovered shall be set apart for the erection of such guide boards.

**§ 69. Measurement of highways and report.**— Within six months after the taking effect of this chapter, and as often as the commission shall direct, the town superintendent shall measure all highways of his town. Such measurements shall be made either by the use of a cyclometer or otherwise as the commission shall direct. He shall ascertain, and indicate in his report, the

town highways which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned. He shall report in triplicate on forms to be prescribed and furnished by the commission, the total mileage of all highways within his town, specifying as above provided as to town highways, one of which shall be filed with the town clerk, one with the district or county superintendent, and one with the commission.

By an opinion of the Attorney-General under date of May 3, 1909, it was held that if it appears to a town superintendent that a road has not been used for two years preceding his action by more than two vehicles daily, in addition to pedestrians and horseback riders, he has the authority to declare the qualified abandonment of the road; and if this condition has existed for two years prior to his action, he was justified in declaring it abandoned without regard to the occupancy of premises along its route. It was also held, regarding the matter of measurement of qualifiedly abandoned highways, as a part of the town highway, "that the provision of the State Highway Law requiring a measurement of such roads is abrogated and that the same should not be counted as a part of the town's measurement."

It was also held that "The parties living upon or owning property along such road should be assessed and road taxes laid against them the same as all other residents of towns outside of incorporated villages and paid at the same time as their general taxes."

**§ 70. Application for service of prisoners.**—After satisfying himself that proper quarters can be secured, the town superintendent may, with the consent of the town board, request the supervisor of the town under the provisions of section ninety-three of the county law, to procure the services of prisoners serving sentence in the county jail, for general work upon the public highways of the town.

**§ 71. Construction and repair of approaches to private lands.**—The owners or occupants of lands shall construct and keep in repair all approaches or driveways from the highway, under the direction of the district or county superintendent, and it shall be unlawful for such owner or occupant of lands to fill up any ditch or place any material of any kind or character in any ditch so as to in any manner obstruct or interfere with the purposes for which it was made. The town superintendent may, when directed by the town board, construct and keep in repair such approaches and the expense thereof shall be a town charge.

**§ 72. Unsafe toll bridge.**—Whenever complaint in writing, on oath, shall be made to the town superintendent, of any town in which shall be in whole or in part any toll bridge belonging to

any person or corporation, representing that such toll bridge has from any cause become and is unsafe for the public use, such town superintendent shall forthwith make a careful and thorough examination of such toll bridge, and if upon the examination thereof he shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, he shall thereupon give immediate notice to the owners of such toll bridge, or to any agent of such owners, acting as such agent in respect to such bridge, that he has, on complaint made, carefully and thoroughly examined the bridge, and found it to be unsafe for public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects safe and convenient for public use. For neglect to take prompt and effective measures so to repair the bridge, its owners shall forfeit twenty-five dollars, and shall not demand or receive any toll for using the bridge until the same shall be fully repaired. The town superintendent shall cause such repairs to be made and the owners of the bridge shall be liable for the expense thereof, and for the services of the superintendent, and upon the neglect or refusal to pay the same upon presentation of an account therefor, the town superintendent may recover the same by action, in the name of the town.

**§ 73. Actions for injuries to highways.**—The town superintendent shall bring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.

See sections 74, 330 and 46 of the Highway Law, and sections 1530, 1423, 1841 and 1857 of the Penal Law.

Under an opinion of the Attorney-General, dated December 14, 1911, it was held that the enforcement of the above statutes devolves upon the local county and town officials, with the single exception that under section 46 of the Highway Law the Commission may prefer charges against the town superintendent asking for his removal.

**§ 74. Liability of town for defective highways.** Every town shall be liable for all damages to persons or property sustained

by reason of any defect in its highways or bridges, existing because of the neglect of any town superintendent of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action, including the time and place at which such injury is alleged to have been received, shall have been filed with the town clerk of the town within six months after the cause of action accrued. And no such action shall be commenced until fifteen days after the service of such statement.

Amended by L. 1913, ch. 389.

**§ 75. Action by town against superintendent.**— If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highway or bridges, existing because of the neglect of any town superintendent, such town superintendent shall be liable to the town for the amount of the judgment, and interest thereon, but such judgment shall not be evidence of the negligence of the superintendent in the action against him.

**§ 76. Audit of damages without action.**— The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited unless it shall have been presented to the supervisor of the town within six months after it accrued, nor if any action thereon shall be barred by the statute of limitations. The town board may also audit any unpaid judgment heretofore or hereafter recovered against a town superintendent for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damage did not exist because of the negligence or misconduct of the superintendent against whom such judgment shall have been recovered.

**§ 77. Closing highways for repair or construction.**— If it shall appear necessary to close a highway which is being constructed, improved or repaired under this chapter so as to permit a proper completion of such work, the district or county superintendent shall upon request of the division engineer, or direction of the state superintendent of highways execute a certificate and file the same in the office of the town clerk in which such highway is

situated. Such certificate shall state the necessity for the closing of such highway and describe the portion thereof to be closed; not more than two miles of any highway shall be closed at any one time. At the time of filing such certificate such district or county superintendent shall notify the town superintendent to close the highway, who shall thereupon close the same to public travel by erecting suitable obstruction and posting conspicuous notices to the effect that the highway is closed. The town superintendent shall, if practicable, provide a new location for, and construct a temporary highway to be used by the traveling public in lieu of the closed highway and may erect temporary bridges when necessary or cause other existing highways to be used, when so directed by the district or county superintendent. For the purpose of locating, constructing and erecting such temporary highway or bridge the town superintendent may enter upon the lands adjoining or near to the closed highway and may, with the approval of the town board, agree with the owners of such land as to the damages if any caused thereby.

If the town superintendent is unable to agree with such owner upon the amount of damages thus sustained the amount thereof shall be ascertained, determined and paid as provided in section fifty-eight. When such highway shall have been closed to the public as provided herein any person who disregards the obstruction and notice, and drives, rides or walks over the portion of the highway so closed shall be guilty of a misdemeanor.

Amended by L. 1911, ch. 646.

By an opinion of the Attorney-General under date of May 22, 1913, it was held that under the foregoing section the Highway Law provides that the right of way for detours, made necessary by the closing of roads under repairs or construction, must be acquired by the town superintendent, and section 58 provides that the damages are a town charge.

\* \* \*. It is the duty of the contractor to give all reasonable assistance in maintenance of traffic and he would not be justified in fencing or closing a temporary road within the boundaries of the highway limits, unless it was absolutely necessary in the prosecution of his work.

**§ 78. Adoption of labor system for removing snow.**—The town board of any town at its annual meeting on the first Thursday after general election, may, by resolution, determine that no money shall be raised in such town for the ensuing year for the removal of obstructions in the highways caused by snow, and that such obstructions shall be removed by the labor of persons and corporations liable to be assessed in such towns for highway taxes.

Added by L. 1909, ch. 488, and amended by L. 1910, ch. 136.

**§ 79. Assessment of labor for the removal of snow.—**The town superintendent of a town in which the obstructions in the highways caused by snow shall be removed by the labor of persons and corporations liable to assessment in each town for highway taxes, pursuant to the last preceding section shall annually on or before November fifteenth divide the town into a convenient number of highway districts and file a description thereof in the office of the town clerk, and before such date shall make an estimate giving the probable number of days labor needed during the following year for the removal of obstructions caused by snow in the highways and for the prevention of such obstructions and shall assess one day's labor upon each male inhabitant of the town above the age of twenty-one years, excepting honorably discharged soldiers and sailors who lost an arm or a leg in the military or naval service of the United States, or who are unable to perform manual labor, by reason of injuries received or disabilities incurred in such service, members of any fire company formed or created pursuant to any statute, and situated within such town, persons seventy years of age or over, clergymen and priests of every denomination, paupers, idiots and lunatics. The balance of such estimated number of days shall be apportioned and assessed upon the estate, real and personal, of every inhabitant of the town, including corporations liable to taxation therein, as the same shall appear by the last assessment roll of the town, and upon each parcel or tract of land owned by the nonresidents, excepting such as are occupied by an inhabitant of the town, which shall be assessed to the occupant. The assessment of labor for personal property must be in the district in which the owner resides, and real property in the district where it is situated, except that the assessment of labor upon the property of corporations may be in any district or districts of the town, and such labor may be worked out or commuted for as if the corporation were an inhabitant of the district; but the real property within an incorporated city or village exempted from the jurisdiction of the town superintendent, and personal property of an inhabitant thereof, shall not be assessed for such labor by the town superintendent. Whenever the assessors of any town shall have omitted to assess any inhabitant, corporation or property therein, the town superintendent shall assess the same, and apportion the labor as above provided.

Added by L. 1909, ch. 488, and amended by L. 1910, ch. 136.

**§ 80. Lists of persons assessed for removal of snow.—**A copy of the lists of persons and corporations assessed shall be prepared by the town superintendent and filed in the office of the town clerk. The town superintendent may at any time file in the office of the town clerk a supplemental list containing the names of persons or corporations omitted from the original list, and the names of new inhabitants, and shall assess them in proportion to their real and personal estate as others assessed by him on such list.

Added by L. 1909, ch. 488.

**§ 81. District foreman; return and levy of unworked tax.—**The town superintendent shall also, immediately after the town has been divided into districts as provided in section seventy-nine of this chapter, appoint a foreman in each district, who shall be a taxable resident thereof, who shall serve for one year and until his successor is appointed and shall receive such per diem compensation, not exceeding two dollars per day, for time actually spent in performing his duties, as the town board may prescribe, payable as the compensation of other town officers is paid. The superintendent shall prepare, from the lists prescribed in section eighty, a separate list for each district of persons and corporations assessed therein for the then current year for labor in removing obstructions caused by snow, showing the number of days labor for which each person or corporation is assessed, and shall deliver each such list to the foreman of the proper district. It shall be the duty of each foreman to notify the several persons and corporations thus assessed, or such of them as the occasion demands, from time to time as needed, that they are required to appear and perform labor in the removal of obstructions caused by snow at a time and place stated by the foreman. On or before the first day of May each district list, showing the portions worked or commuted for, the portions in which parties were notified but failed to perform work after being so notified, and the portions upon which no notice to perform work was served, shall be returned by the district foreman to the town superintendent. All assessments upon which parties have been notified and failed to appear or commute shall then be certified by the town superintendent to the town board, who shall return the same to the board of supervisors of the county and which shall be included by them

in the next tax-roll of the town and levied against the persons and corporations assessed at the rate of one dollar and fifty cents per day as other taxes are levied.

Inserted by L. 1910, ch. 136.

**§ 82. Appeals by nonresident; certain assessments to be separate; tenant may deduct assessment.**— Whenever any nonresident owner of unoccupied land shall conceive himself aggrieved by any such assessment of any town superintendent, such owner or his agent, may, within thirty days after such list has been filed in the office of the town clerk, appeal to the county judge of the county in which such land is situated, who shall within twenty days thereafter hear and decide such appeal, the owner or agent giving notice to the town superintendent of the time of the hearing before the judge, and his decision thereupon shall be final and conclusive. Whenever the town superintendent shall assess the occupant for any land not owned by such occupant, he shall distinguish in his assessment list the amount charged upon such list, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year on account of the same land. Whenever any tenant of any land, for a less term than twenty-five years, shall be assessed to work on the highways for such land, and shall actually perform such work or commute therefor, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such assessment, estimating the same at the rate of one dollar per day, unless otherwise provided for by agreement between the tenant and his landlord. Whenever the highways in any district are obstructed by snow, the town superintendent shall immediately call upon the persons and corporations in such district assessed for labor in pursuance of the preceding sections to assist in removing such obstruction, and shall credit such persons or corporations with the days' labor so performed. If any persons, corporations or occupants of land owned by nonresidents so called out neglect or refuse to appear at the place designated by the town superintendent or to commute at a dollar a day within twenty-four hours after due notice, the town superintendent shall cause the obstruction to be immediately removed and on or before September first of each year, or at such other time as the board of supervisors may by resolution prescribe, make out a list of all persons, corporations or occupants of lands owned by non-

residents who shall fail to work out such labor or commute therefor, with the number of days not worked out or commuted for by each, charging for each day in such list at the rate of one dollar and fifty cents per day, verified to the effect that such persons, corporations or occupants of lands owned by nonresidents have been notified to appear and perform such labor or commute therefor, and that the same has not been performed or commuted. Such list shall be certified by the town superintendent of such town to the town board and by such town board to the board of supervisors and the highway commission, and the amount of such arrearages shall be levied by such board of supervisors against and collected from the real or personal estate of such persons and corporations and from the real estate owned by nonresidents specified in such list, to be collected by the collectors of the several towns in the same manner that other town taxes are collected, and shall order the same when collected to be paid over to the supervisor to be by him added to the highway fund of the town. No persons or corporations shall be allowed any sum for highway labor performed in removing obstructions caused by snow, unless authorized or directed by the town superintendent to perform such labor. It shall be the duty of the town superintendent on or before the thirty-first day of October in each year to file with the highway commission a statement showing the number of days' labor assessed. It shall also be the duty of the town superintendent to file with the highway commission on or before the first day of June in each year a statement showing the number of days' labor performed or commuted for, the number of days' labor on which parties were notified but failed to labor, also the number of days' labor upon which no notice to appear was given.

Added by L. 1909, ch. 488. Renumbered and amended by L. 1910, ch. 136.

## ARTICLE V.

### Highway Moneys; State Aid.

- Section 90. Estimate of expenditures for highways and bridges.  
91. Duties of town board in respect to estimates; levy of taxes.  
92. Additional tax.  
93. Extraordinary repairs of highways and bridges.  
94. Limitations of amounts to be raised.  
95. Submission of propositions at town meetings.  
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**§ 90. Estimate of expenditures for highways and bridges.—**

The town superintendent shall annually, on or before the thirty-first day of October, make a written statement in respect to the amount of money which should be raised by tax in the town for the ensuing year, beginning on said first day of November, for the purposes therein set forth which shall be filed with the town clerk. Such statement shall specify:

1. The amount of money necessary to be levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, and also the amount necessary to construct or repair any public roads, walks, places or avenues on any island or part of an island in the town. Such amount shall not be less than an amount which when added to the amount of money to be received from the state, under the provision of section one hundred and one, will equal thirty dollars for each mile of highways within the town, outside the limits of incorporated villages, except that no town having an assessed valuation of three thousand seven hundred and fifty dollars or less per mile outside of incorporated villages shall be required to levy and collect a tax under this subdivision in excess of four dollars on each thousand dollars of assessed valuation.

Amended by L. 1914, ch. 84.

2. The amount of money necessary to be levied and collected for the repair and construction of bridges, having a span of five feet or more.

3. The amount of money necessary to be levied and collected for the purchase, repair and custody of stone crushers, steam rollers, traction engines, road machines for grading and scraping, tools and implements.

4. The amount of money necessary to be levied and collected for the removal of obstructions caused by snow and for other miscellaneous purposes.

The amounts specified in such statement shall not exceed the limitations prescribed in section ninety-four. If the town superintendent is of the opinion that an amount in excess of the limitations therein prescribed be raised by tax he shall include in his statement his reasons therefor in detail.

**Change in method of highway taxation.** One of the objects sought by this law is the abolishing of the old labor system of taxation and substituting in place thereof in all towns the money system of raising highway taxes. This has affected the method of highway taxation in less than three hundred of the nine hundred and thirty-three towns of the State. In other towns the money system is in force when this chapter takes effect. In towns adopting the money system, under the former law, the amount of the tax to be levied and collected in the town was to be determined by the commissioner or commissioners of highways and the town board. See former Highway Law, § 53. The minimum amount to be collected in such towns for the repair of highways was required, by that section, to at least equal one-half the value of the commutation rates, of the highway labor which should be assessable under the labor system. This section of the former law did not, nor does the present law, prescribe the maximum amount which could be raised by tax for the repair and maintenance of highways.

If it became necessary to raise money by tax upon the town for other purposes than the repair and maintenance of highways, authority therefor, either expressed or implied, had to be found in the various more or less conflicting provisions of the former law. The new law seeks to eliminate this confusion by placing the initiative with the town superintendent, making it his duty to present to the town board in a formal statement, the amount, which in his opinion, should be raised in the town during the ensuing year for the purposes specified therein. This statement is in the nature of a highway budget. It becomes effectual and binding upon the town when finally approved by the town board. Upon such approval it is to be submitted to the board of supervisors who thereupon must cause the amounts specified in the statement to be levied and collected in the town in the same manner as other charges against the town are levied and collected. It is thus provided that an amount sufficient to properly administer highway affairs in the town for the ensuing year will be collected and ready for use in the hands of the supervisor. This statement must be submitted on or before the thirty-first day of October, which brings it to the attention of the town board so that the town board may act upon it at its regular meeting on the Thursday preceding the annual meeting of the board of supervisors. The levy is made by the board of supervisors at its annual meeting and when the tax warrant reaches the hands of the collector it provides for the collection of money sufficient to take care of highway matters during the ensuing year. Such moneys will be paid over to the supervisor, for the most part, in the months of January, February or March, prior to the time when active operations upon the highways are required to be begun.

By an opinion of the Attorney-General under date of February 10, 1909, it was held that observance of the provisions of subdivision 1 of section 90 of the Highway Law is a condition precedent to a town receiving State aid. It was also held that the minimum amount provided by the statute for the repair and improvement of highways must be levied and collected each year, irrespective of any balance remaining over from other years.

By an opinion of the Attorney-General under date of May 24, 1909, it was held that property purchased with pension money is liable for taxation under each of the subdivisions of section 90.

See Attorney-General's opinion under date of October 24, 1910.

**§ 91. Duties of town board in respect to estimates; levy of taxes.**

— The town board, at its meeting held on the Thursday succeeding general election day in each year, shall consider the estimates contained in such statement. It may by a majority vote of the members thereof, approve such statement, or increase or reduce the amount of any of the estimates contained therein, subject to the limitations prescribed in section ninety-four. The statement as thus approved, increased or reduced shall be signed in duplicate by a majority of the members of the town board, one of which shall be filed in the office of the town clerk, and the other shall be delivered to the supervisor. The town clerk shall make and transmit a copy of such statement to the commission. The supervisor shall present such statement to the board of supervisors, and such board shall cause the amounts therein, subject to the limitation requiring a vote of the electors as hereafter provided, to be assessed, levied and collected in such town in the same manner as other town charges, and such amounts shall be expended for the purposes specified in such statement. The warrant for the collection of taxes in such town shall direct the payment of the money so collected to the supervisor of the town, to be held by him and paid out for the purposes specified in such statement, as provided in this chapter.

**Insufficient appropriations.** In the absence of authority conferred upon him the town superintendent has no power to proceed with the improvements, and apply in payment therefor the appropriation for the succeeding year, and expenditures so made create no legal claim against the town. *People ex rel. Peterson v. Clark*, 45 App. Div. 65, 60 N. Y. Supp. 1045 (1899). The town superintendent of highways cannot of his own volition bind the town for a greater amount than that estimated, levied and collected. *Mather v. Crawford*, 36 Barb. 564 (1862); *Barker v. Loomis*, 6 Hill, 463 (1844).

**§ 92. Additional tax.**—Whenever the town superintendent and the town board shall determine that the sum of one thousand dollars will be insufficient to pay the expenses actually neces-

sary for the removal of obstructions caused by snow and the prevention of such obstructions, and whenever they shall determine that the amounts levied and collected for any of the purposes mentioned in the statement presented to the board of supervisors, as provided in the preceding section, are insufficient to pay the expenses necessarily incurred for any of the purposes therein specified they may cause a vote to be taken by ballot at a biennial town meeting or at a special town meeting duly called therefor, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town as shown by the last assessment-roll thereof.

**§ 93. Extraordinary repairs of highways and bridges.** If any highway or bridge shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel, or if any bridge be condemned by the commission, as provided in this chapter, the town superintendent shall cause the same to be immediately repaired or rebuilt, with the approval of the town board. Such highway or bridge shall be so repaired or rebuilt in accordance with the directions or the plans and specifications prepared or approved by the district or county superintendent; except if the bridge to be repaired or rebuilt is one which has been condemned by the commission, as provided in this chapter, the same shall be repaired or rebuilt in accordance with plans and specifications to be prepared or approved by the commission. The town clerk shall prepare a statement showing the probable cost of improving, repairing or rebuilding such highway or bridge, which statement shall be signed in duplicate by a majority of the members of the town board, one of which duplicates shall be filed with the town clerk and one be delivered to the supervisor. The town clerk shall make a copy of such statement and transmit the same to the commission. The supervisor shall present such statement to the board of supervisors, who shall cause the amount contained in such statement to be assessed, levied and collected in the same manner as amounts levied and collected for other highway and bridge purposes, as provided by law. The amount so raised shall be paid to the supervisor to be expended for the purposes specified in such statement.

Amended by L. 1913, ch. 621.

**Application.** This section does not authorize the rebuilding of a bridge which has become defective by ordinary wear and tear or the natural decay of the materials of which it was constructed, at a cost exceeding the moneys

appropriated for highway purposes; it only authorizes such construction where the bridge has become destroyed by some emergency or by some extraordinary cause. It is more than doubtful if this section has any relation to or was intended to apply where a bridge or its approaches are partly in two towns. *People ex rel. Canton Bridge Co. v. Town Auditors*, 136 App. Div. 166 (1909), 120 N. Y. Supp. 696.

See Attorney-General's opinion under date of May 3, 1910.

**§ 94. Limitations of amounts to be raised.**—The amounts to be raised by tax upon the vote of a town board, as provided in this article, shall be subject to the following limitations:

1. The amount to be levied and collected in each year for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, shall not be less than the amount prescribed under subdivision one of section ninety.

2. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair and construction of a bridge unless duly authorized by vote of a town meeting.

3. Not more than five hundred dollars shall be levied and collected in any one year in any town for the purchase or repair of stone crushers, steam rollers, traction engines or road machines for grading and scraping, tools and implements, unless duly authorized by the vote of a town meeting.

4. Not more than fifteen hundred dollars shall be levied and collected in any one year in any town for the repair or construction of any highway or bridge which has been damaged or destroyed as provided in section ninety-three or which has been condemned by the commission as provided in this chapter, unless duly authorized by vote of a town meeting.

**Debts in excess of limitation.** A town superintendent has no general authority to bind the town by his contracts. He must find his authority in the statute, and those who deal with him, and with the other officers of the town are presumed to know this limitation of power. See *People ex rel. Everett v. Supervisors*, 93 N. Y. 397 (1883); *Berlin Bridge Co. v. Wagner*, 57 Hun, 346, 10 N. Y. Supp. 840 (1890). If he and the town board attempt to raise by tax more money than the limit prescribed by this section, the levy would be invalid, and the collection of the tax might be legally prevented.

See Attorney-General's opinions of May 3, 7, and June 10, 1910.

**§ 95. Submission of propositions at town meetings.**—A proposition to authorize the levy and collection of an amount greater than that specified in the preceding section for any of the purposes

therein mentioned may be submitted upon the written application of twenty-five taxpayers upon the last town assessment-roll or by a majority of the members of the town board, at a biennial town meeting or a special town meeting duly called as provided by law. The provisions of the town law relating to the submission of town propositions at a biennial or special town meeting shall apply to the submission of such propositions. If such proposition be adopted the town board shall include in the estimates contained in the next statement submitted by it to the board of supervisors, as provided in section ninety-one, the amounts authorized to be raised by such proposition for the purposes therein stated, and thereupon such amounts shall be levied and collected, and paid to the supervisor, to be expended by him as directed by such proposition.

**§ 96. Borrowing money in anticipation of taxes.**—The supervisor may, when authorized by the town board, borrow money in anticipation of taxes to be levied and collected, on the credit of the town, and issue certificates of indebtedness therefor in the following cases:

1. When an additional sum is directed to be levied and collected by a vote of a town meeting as provided in section ninety-two.
2. When an amount necessary for the payment of expenses incurred in the improvement, repair and rebuilding of a highway or bridge has been directed to be levied and collected as provided in section ninety-three.
3. When a proposition has been adopted at a town meeting as provided in section ninety-five authorizing the levy and collection of an amount greater than that specified in section ninety-four for any of the purposes therein mentioned.

Such certificates of indebtedness shall be signed by the supervisor and the town clerk and shall bear interest at a rate not exceeding six per centum for a period not exceeding one year. The amount so borrowed shall be paid out by the supervisor for the purposes for which the taxes, in anticipation of which such certificates were issued, is to be levied and collected. The principal and interest of such certificates shall be paid by the supervisor immediately upon the collection of the taxes levied for such purposes.

**§ 97. Towns may borrow money for bridge and highway purposes.**—A proposition may be submitted at a regular or special town meeting in the manner provided by the town law, authorizing

the town to borrow money upon its bonds, or other obligations, to be expended for the following purposes:

1. Constructing, building, repairing or discontinuing any highway or bridge therein, or upon its borders.
2. Repairing or rebuilding any highway or bridge which shall at any time be damaged or destroyed by the elements or otherwise, or become unsafe for public use and travel.
3. Repairing or rebuilding any bridge which has been condemned by the commission, as provided in this chapter.
4. The purchase of stone crushers, steam rollers and traction engines.

The vote upon any such proposition shall be by ballot. If any such proposition shall be adopted, the board of supervisors, upon the application of the town board, shall by resolution authorize the town to issue bonds not exceeding the amount specified in said proposition, which shall be sufficient to refund and pay any temporary loan or certificate of indebtedness, and to provide for the completion of any work authorized. There shall accompany such application a statement signed by a majority of the members of the town board, and certified by the town clerk, containing a copy of the proposition submitted, as above provided, the vote for and against the same, and specifying the amount which it is estimated will be required to be expended, pursuant to such proposition. If the highway or bridge, proposed to be constructed, built, repaired or discontinued, is situated in two or more towns in the same county, the board of supervisors shall, if application be made by any one of such towns, apportion the expense thereof among such towns, in such proportion as shall be just. If the town adopting any such proposition shall contain any portion of the land of the forest preserve, the board of supervisors shall not authorize such town to borrow moneys without the written approval of the forest, fish and game commissioner, except in payment of a debt lawfully incurred by the town.

Amended by L. 1914, ch. 202.

See Attorney-General's opinion of May 7 and October 24, 1910, and March 11, 1909.

**§ 98. Issue and sale of town bonds.**—The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such obligations as they shall become due. The supervisors and town

clerk shall each keep a record, showing the date and amount of the obligations issued, the time and place of their payment, and the rate of interest thereon. The obligations shall be delivered to the supervisor of the town, who shall dispose of the same for not less than par and apply the proceeds thereof for the purposes for which they were issued. Not more than five hundred dollars of such proceeds shall be expended upon any highway or bridge, except in pursuance of a contract executed by the town superintendent as provided in section forty-eight.

**§ 99. Assessment of village property.**—In any town in which there may be an incorporated village, which forms a separate road district, and wherein the roads and streets are maintained at the expense of such village, all property within such village shall be exempt from the levy and collection of taxes levied in the town, as provided by section ninety-one of this article, for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The assessors of such town shall indicate in a separate column the value of the real and personal property included in such incorporated village.

**§ 100. Statement by clerk of board of supervisors.**—The clerk of the board of supervisors of each county shall, on or before the first day of January of each year, transmit to the state comptroller and the commission a statement, signed and verified by the chairman of the board, and certified by the clerk, which shall state the name of each town, the assessed valuation of real property, and the assessed valuation of personal property, each separately, in the towns outside incorporated villages, and the amount of tax levied therein for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet. The towns' valuation of real property to be used in such statement shall be the valuation thereof, as equalized by the boards of supervisors, or other competent authority, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.

**Object of statement.** The purpose of this statement is to afford the state comptroller and the commission information sufficient to permit a payment to each town of the amount to which it is entitled under section 100. The amount so to be paid to each town is based upon the amount of taxes levied therein for the repair and improvement of highways. The final estimate of the amounts to be raised for highway purposes within the town being approved by the town board, and submitted to the board of supervisors it becomes the

duty of the board to levy a tax upon the town sufficient to meet highway requirements during the ensuing year. The amount of taxes levied for the repair and improvement of highways should be kept separately from the taxes levied for the other purposes mentioned in such estimate so that the clerk of the board of supervisors may prepare the statement required by this section.

State aid is not only allowed on account of moneys raised for the repair and improvement of highways. If an additional amount is raised for such repair and improvement, as provided in section 92, it should be included in the statement.

**§ 101. Amount of state aid.—** There shall be paid by the state to the several towns, in the manner hereinafter provided, an amount based upon the amount of taxes levied therein for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, and to be determined as follows:

1. In towns where the assessed valuation of real and personal property, exclusive of such property in incorporated villages, shall be less than five thousand dollars for each mile of highways in such towns, outside of incorporated villages, an amount equal to the amount of such taxes.
2. In towns where such assessed valuation shall be five thousand dollars or over and less than seven thousand dollars for each mile of such highways, an amount equal to ninety per centum of the amount of such taxes.
3. In towns where such assessed valuation shall be seven thousand dollars or over and less than nine thousand dollars for each mile of such highways, an amount equal to eighty per centum of the amount of such taxes.
4. In towns where such assessed valuation shall be nine thousand dollars or over and less than eleven thousand dollars for each mile of such highways, an amount equal to seventy per centum of the amount of such taxes.
5. In towns where such assessed valuation shall be eleven thousand dollars or over and less than thirteen thousand dollars for each mile of such highways, an amount equal to sixty per centum of the amount of such taxes.
6. In towns where such assessed valuation shall be thirteen thousand dollars or over for each mile of such highways, an amount equal to fifty per centum of such taxes. Provided that no town shall receive from the state in any year, under this section, an amount exceeding an average of twenty-five dollars per

mile, for the total mileage of its highways outside of incorporated villages, except that in towns where the assessed valuation of real and personal property therein, exclusive of such property in incorporated villages, averages more than twenty-five thousand dollars for each mile of highways therein outside of such villages, the amount paid hereunder shall not exceed one-tenth of one per centum of such assessed valuation.

7. Where a town, having within its limits an incorporated village or city of the third class, shall levy a tax upon the whole town including such incorporated village or city, the same to be spent wholly without the limits of such village or city, for the repair and improvement of highways, sluices, culverts and bridges having a span of less than five feet, the amount of such tax shall be included in the statement to be transmitted by the clerk of the board of supervisors to the comptroller as required by section one hundred of the highway law and such amount shall be used as an additional basis of the amount of state aid under this section, the same as if such tax were levied wholly without the limits of such incorporated village or city of the third class.

Amended by L. 1913, ch. 375, by adding a new subdivision to be known as subdivision 7.

From an opinion of the Attorney-General under date of October 24, 1910, it was held:

"It is evident that the use of moneys \* \* \* moneys raised for the repair and improvement of highways, including state aid, are never available for the construction of new town roads and could not be legally diverted to any other use. The different funds are required to be kept separate by section 107 of the Highway Law, also by order of the State Highway Commission, and a surplus in one fund is not available for use for other work. I am, therefore, of the opinion that moneys known as state aid cannot be used in the building and construction of new town roads or for the payment of damages awarded to land owners in the laying out of a new highway, or for any other purpose except the repair and improvement of the highways of the town.

"In reply to that part of your enquiry as to how the town can procure the necessary money to build a highway, if it cannot be taken from the general fund for the repair and improvement of the highways, I beg to state that section 90 of the Highway Law requires the town superintendent to make estimates of the amounts that should be raised by tax in the town for the ensuing year, and by subdivision 4 thereof he can make an estimate and present it to the town board of the amount which he deems necessary should be raised for building a town highway that has been newly laid out. It is certainly a miscellaneous purpose not provided for in any other subdivision of that section. There is no limitation to the amount that can be raised for miscellaneous purposes except as it is controlled by the public necessities of the town.

"It is also a purpose that can only arise occasionally in any town and is not of annual occurrence like most of the other purposes mentioned in the act referred to.

"The estimates above mentioned are then laid before the town board and if it approves the several amounts are laid before the board of supervisors and raised in the same way as other highway taxes in the town, but if this method is not deemed expedient and if any town board should not feel that it was authorized to raise the amount as above outlined, a proposition can be submitted as provided by section 97 of the Highway Law to the voters of the town."

In an opinion of the Attorney-General rendered May 28, 1913, it was held that new subdivision 7 has no retroactive effect in regard to previously levied highway taxes.

**§ 102. Mileage and assessed valuation.**—The mileage of highways in towns to be used in determining the amounts to be paid to such towns under the provisions of this article shall be the tables of mileage heretofore prepared by the state engineer, until the corrected tables of mileage prepared as provided in section fifteen of this chapter are filed. Such tables and all corrections thereof shall be filed with the commission and comptroller. The assessed valuation of real property to be used in determining such amounts shall be the valuation thereof, equalized as provided in section one hundred and forty-one of this chapter, during the year prior to the levy of taxes upon which is based the determination of the amounts to be paid to the several towns, as provided in this article.

**§ 103. Payment and distribution of state money.**—The comptroller shall determine the amount due to the several towns, under the provisions of this article, and shall draw his warrant upon the state treasurer in favor of the county treasurer of each county for the total amount to be paid to the towns in such county, as so determined by him, and shall indicate the amount to be paid to each town. The county treasurer shall pay to the supervisor of each town the amount to which such town is entitled, as determined and indicated by the comptroller. No such payment shall be made until the supervisor has filed in the office of the county treasurer a certified copy of the undertaking given by him, as provided in this article.

**§ 104. Custody of highway moneys; undertaking of supervisor.**—All moneys levied and collected, as provided in this article, all moneys collected as penalties under this chapter, or received from any other source and available for highway, bridge and miscellaneous purposes and all moneys received from the state, as

provided in section one hundred and one, shall be paid to the supervisor, who shall be the custodian thereof, and accountable therefor. Before receiving any such moneys the supervisor shall give an undertaking to the town in an amount to be specified by the commission and with such sureties, as shall be approved by the town board, conditioned for the faithful disbursement, safe-keeping and accounting of the moneys so received by him. Such undertaking shall be filed in the office of the town clerk and a certified copy thereof shall be filed in the office of the county treasurer before any moneys received from the state shall be paid to him, and also in the office of the commission. In case of a failure of the supervisor to faithfully disburse, safely keep or account for moneys received from the state the commission may bring an action on such bond in the name of the town.

By an opinion of the Attorney-General under date of May 4, 1910, it was held, that "The rules and regulations made by your Commission requiring the supervisor to keep the highway funds of the town in a separate account, are clearly within your authority, and, considered in the light of the several provisions of the statute above referred to, it is made your duty to formulate and provide the same; and it is clear that you can compel compliance with such rules and regulations in the event of a failure or refusal to comply therewith."

By an opinion of the Attorney-General under date of May 8, 1909, it was held that "No highway moneys can be paid to such supervisor until he has executed and filed in the office of his town clerk, a bond in such an amount as your Commission may specify, to be approved by the town board of your town, and until such bond has been executed the county treasurer would have no right to pay over any highway moneys to him."

By an opinion of the Attorney-General under date of December 9, 1911, it was held that bonds of supervisors of towns for the receipt of State highway moneys must be given for the faithful disbursement, safe keeping and accounting of all such moneys received by him and may cover the full term of his office.

**§ 105. Expenditures for repair and improvement of highways.—** The moneys levied and collected for the repair and improvement of highways, including sluices, culverts and bridges having a span of less than five feet, and the moneys received from the state, as provided by section one hundred and one, shall be expended for the repair and improvement of such highways, sluices, culverts and bridges, at such places and in such manner as may be agreed upon by the town board and town superintendent. The town board and the town superintendent shall constitute a board for the purpose of determining the places where and the manner in which such moneys shall be expended. Such agreement shall be written and

signed in duplicate by a majority of the members of the board so constituted, and shall be approved by the commission, before the same shall take effect. One of such duplicates shall be filed in the office of the town clerk and one in the office of the district or county superintendent. Such moneys shall be paid out by the supervisor on the written order of the town superintendent in accordance with such written agreement. The town board and town superintendent may also appropriate from such moneys such a sum of money as they deem proper for the construction or repair of any public road, walk, place or avenue upon any island or part of an island in the town, although such road, walk, place and avenue is narrower than the width of highways required by statute, but the construction or repair of any such road, walk, place or avenue with such moneys on any island shall not be construed as imposing any liability upon the town or upon the superintendent of highways for any injury to person or property happening thereon.

Amended by L. 1914, ch. 84.

**§ 106. Expenditures for bridges and other highway purposes.—** The moneys levied and collected, or raised by the issue and sale of bonds or certificates of indebtedness in anticipation of taxes, as provided in this article, for purposes other than the repair or improvement of highways, as specified in the preceding section, shall be paid out by the supervisor upon the written order of the town superintendent after audit of the town board. Such audit shall be made on verified accounts presented to the town board at a regular or special meeting called for such purpose by the supervisor, or in his absence, by the town clerk, upon the request of the town superintendent. An account shall not be so audited or paid unless the expenditure be in accordance with the annual estimate of the town superintendent, as approved or modified by the town board, or be authorized by the town board or by a vote of a town meeting, as provided in this article, or be lawfully a charge upon the town. Except as herein otherwise provided the provisions of the town law relating to the audit of town accounts and claims shall apply to accounts and claims against the town arising under this chapter.

See Attorney-General's opinions of February 27 and April 16, 1909.

**§ 107. Reports of supervisor as to highway moneys.—** The supervisor shall present to the town board at its meeting held in each year, for considering the estimates contained in the state-

ment of the town superintendent, as provided in section ninety-one, a verified report showing:

1. The moneys received from the state, as provided in section one hundred and one during the year ending October thirty-first.

2. The moneys received by him during such year on account of taxes levied and collected and from the issue and sale of bonds and certificates of indebtedness in anticipation of taxes, for highways, bridges, purchase and repair of machinery, tools and implements, the removal of obstructions caused by snow and for miscellaneous purposes.

3. The moneys received by him during such year as penalties recovered pursuant to this chapter, or from any other source and available for highway purposes in his town.

4. The expenditures during such year for the improvement, repair and maintenance of highways, for the maintenance and repair of bridges, for the construction of new bridges, for damages and charges in laying out, altering and discontinuing highways, for the removal of obstructions caused by snow, for the purchase of machinery, tools and implements, for the rental or hire of stone crushers, steam rollers and traction engines, for town superintendents' salary or compensation and audited expenses, for allowances as fees on account of receiving and disbursing highway moneys, or for other highway purposes.

5. All machinery, tools and implements owned in whole or in part by the town, the present value of each article thereof, and the estimated cost of all necessary repairs thereto, as shown by the annual inventory of the town superintendent.

The form of such report shall be prescribed by the commission. Such report shall be filed in the office of the town clerk within three days after the presentation thereof and shall be open to public inspection during the office hours of such town clerk and a duplicate shall at the same time be mailed to the commission. A certified copy of such report shall also be filed by the supervisor with the clerk of the board of supervisors, who shall cause the same to be printed in the next issue of the annual proceedings of the board of supervisors. The town board shall cause a certified copy of the report to be published in a newspaper published in the town, or if there be none published therein, then in a newspaper published within the county and having the greatest circulation within the town. The expense of such publication, which shall not exceed ten dollars, shall be a town charge. The clerk

of the board of supervisors shall transmit three copies of the journal of the proceedings of the board containing such report to the commission and three copies to the comptroller.

The report is to be presented at the meeting of the town board held on the Thursday succeeding general election day in each year. This is the annual audit meeting of the board in most towns. It is at this meeting that the estimate of the town superintendent is presented and considered. The result is that the town board at the time that it revises the town superintendent's estimate for the succeeding year has before it the report of the supervisor as to the expenditures of town moneys for highway purposes in the preceding year.

**§ 108. Highway accounts, forms and blanks.**—The commission shall prescribe the method of keeping town accounts of moneys received and expended, as provided in this article, for highways, bridges, purchase, leasing, rental or hire and repair of machinery, tools and implements, the removal of obstructions caused by snow, and miscellaneous purposes, which shall be uniform, so far as practicable, throughout the state. Such commission may adopt forms and blanks for keeping such accounts. The commission shall also prescribe the form of order to be made by the town superintendent, upon the supervisor, and the form of the agreement to be entered into by the town board and town superintendent as provided in section one hundred and five. The town superintendent and supervisor shall keep their accounts in the method, and shall use the blanks and forms, prescribed by the commission. All orders and records of accounts shall be filed in the town clerk's office and preserved as a part of the town records.

**§ 109. Duty of town clerk.**—It shall be the duty of the town clerk, annually, between the fifteenth day of November, and the fifteenth day of December, to transmit to the commission a list containing the names of each supervisor, town superintendent, justice of the peace, town clerk, assessor and collector, showing his post office address, the date of his appointment or election and the expiration of his term of office.

**§ 110. Compensation of supervisor and town clerk.**—The supervisor and town clerk of each town shall receive annually, as compensation for services under this chapter in lieu of all other compensation and fees, an amount to be fixed by the town board. Such compensation shall be a town charge.

**§ 111. Additional expenditure for improvement, repair and maintenance of town highways.**—Upon the written application of twenty-five taxpayers of a town, filed with the town clerk, the

electors thereof may, at a regular or special town meeting, vote by ballot upon a proposition for the expenditure of a sum, not exceeding one-third of one per centum of the total taxable property of the town, including incorporated villages, in addition to the sum authorized by this chapter for the improvement, repair and maintenance of town highways in such town. Such proposition shall be submitted in the manner provided by law for the submission of questions or propositions at a town meeting. If such proposition be adopted, the amount specified therein shall be a town charge and shall be levied and collected in the same manner as other town moneys, and when collected shall be paid to the supervisor and expended for the purposes specified in such proposition as provided in this chapter.

The object of this section is to authorize the raising of a special amount for the repair, improvement and maintenance of town highways. It permits of a submission to the vote of a town meeting of the question as to the amount which shall be expended each year upon the town highways, whenever it is thought desirable to make more extensive improvements than the town board and town superintendent have decided upon. This section permits a town meeting to control the amount to be expended where it seems that the town board has been too conservative in its estimates.

## ARTICLE VI.

### State and County Highways.

#### Section 120. Highways to be constructed or improved by the state.

121. Apportionment of mileage of State highways to be constructed or improved.
122. Construction or improvement of county highways.
123. Preliminary resolution of board of supervisors.
124. Examination of county highway; approval or disapproval by commission.
125. Maps, plans, specifications and estimates.
126. Submission of maps, plans and specifications to district or county superintendent.
127. Action of commission in respect to maps, plans, specifications and estimates.
128. Final resolution of board of supervisors.
129. Order of construction of county highways.
130. Contracts for construction or improvement of highways.
131. Award of contracts to board of supervisors or town board.
132. Responsibility of State superintendent of highways for the performance of contracts for construction or improvement of State and county highways; suspension of work under contract, completion by State superintendent of highways.

- Section 133. Acceptance of state highway when completed.  
134. Acceptance of county highway.  
135. Entry upon adjacent lands for drainage purposes.  
136. Damages for entry.  
137. State and county highways in villages and cities of the second and third classes.  
138. Connecting highways in villages and cities of the second and third classes.  
138-a. State and county highways of additional width and increased cost at expense of town.  
139. Resolution to provide for raising money.  
140. Modifying method of payment.  
141. Division of cost of county highways; payments by county treasurer.  
142. County or town may borrow money.  
143. Apportionment and payment of expense of constructing county highway through or into cities of the second and third classes.  
144. Payment of cost of state highway.  
145. Abolition of railroad grade crossings.  
146. Railroads and other works and structures in and upon highways.  
147. Where cost is assessable against abutting owners.  
148. Acquisition of lands for right of way and other purposes.  
149. Purchase of lands.  
150. Petition to acquire lands.  
151. Commissioners to be appointed.  
152. Duties of commissioners.  
153. County treasurer to pay awards.  
154. Costs; commissioners' fees.  
155. Land may be sold or leased; disposition of proceeds.  
156. Application of provisions of labor law.  
157. Highways and bridges on Indian reservations.  
158. Appointment of reservation superintendent.  
159. Custody of moneys, et cetera.  
160. Maintenance of detours during construction.

**§ 120. Highways to be constructed or improved by the state.—**

The highways which have been heretofore constructed or improved under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, which are included in the routes hereinafter described, together with such other highways as are constructed or improved by the commission in accordance with the routes set forth and described in this section, shall be state highways and shall be constructed or improved at the sole expense of the state as provided in this article. Such routes are hereby set forth and described as follows:

By an opinion of the Attorney-General, dated April 24, 1912, it was held that as a matter of law, town and county officers have no voice in the fixing

of the route of a State highway, the determination of the details of which is vested in the Highway Commission, said Commission to locate such State highway in accordance with the route as defined by section 120 of the Consolidated Highway Laws.

Route 1. Commencing at a point on the dividing line between Westchester county and New York, and running thence northerly through Mount Vernon to the dividing line between the town of Eastchester and the city of Mount Vernon, thence northerly along Post road to White Plains, thence southeasterly along Westchester avenue to Purchase street, thence northerly by Purchase street, by Rye lake and King street to state road, thence northerly by same to Armonk, thence easterly and north-easterly through the town of North Castle to Bedford village, thence northerly to Katonah, thence along the east side of the Croton river by Golden's bridge and Purdy's station to a point on the dividing line between Putnam and Westchester counties at or near Croton Falls, running thence northerly through the eastern portion of Putnam county by the way of Brewster, to a point on the dividing line between Dutchess and Putnam counties at or near Patterson, running thence northerly by the way of Pawling, Wingdale, Dover Plains, Amenia, to a point to be determined by the commission, on the dividing line between Columbia and Dutchess counties, running thence northerly in Columbia county by way of Copake to Chatham, thence northwesterly to a point at or near Valatie, running thence northerly to a point to be determined by the commission, on the dividing line between Rensselaer and Columbia counties, running thence northerly and northwesterly through the southwestern portion of Rensselaer county to a point to be determined by the commission on the Hudson river opposite or nearly opposite the city of Albany.

Route 2. Commencing at Jerome avenue on the dividing line between Westchester county and New York city and running thence northerly along Jerome avenue and Central Park avenue to Hartsdale, thence along the Sprain road and Landers road to Fair Grounds, thence northerly to cross road between Greenburgh, and Mount Pleasant, thence westerly along the same to the Saw Mill River road and the Tarrytown Lake road to Bedford road, thence along the Sleepy Hollow road northerly and westerly to the Albany post road, thence northerly along Albany post road through Briar Cliff, Ossining and Croton Landing, thence along Old Yorktown road to Cornell Dam, thence along westerly side of Croton

lake to Dixie Hill, thence northerly along Croton avenue to Crom-  
pound road, thence westerly along Crompound road through  
Peekskill to Albany post road, thence northerly from Peek-  
skill, to a point to be determined by the commission, on  
the dividing line between the towns of Phillipsburg, Put-  
nam county, and Cortlandt, Westchester county, running thence  
northerly through the western portion of Putnam county to  
a point to be determined by the commission, on the dividing  
line between Dutchess and Putnam counties, running thence  
northerly by the way of the city of Poughkeepsie and Rhine-  
beck, to a point to be determined by the commission, on the  
dividing line between Columbia and Dutchess counties, running  
thence northerly, through Blue Store and Johnstown to Bell's  
Pond, and thence northerly along the Ancram turnpike and North  
avenue, to the city of Hudson, running thence northeasterly from  
the city of Hudson to a point at or near Valatie, connecting with  
route number one, as above described.

Amended by L. 1910, ch. 648.

Route 3. Commencing at a point to be determined by the com-  
mission, on the dividing line between the towns of Orangetown,  
Rockland county, and the state of New Jersey, running thence  
northerly through the eastern portion of Rockland county by the  
way of points at or near Nyack and Haverstraw, to a point to be  
determined by the commission, on the dividing line between  
Orange and Rockland counties, running thence northerly through  
the eastern portion of Orange county to the city of Newburgh,  
thence northerly from the city of Newburgh to a point to be de-  
termined by the commission, on the dividing line between Ulster  
and Orange counties, running thence northerly through the east-  
ern portion of Ulster county to a point on the Rondout creek at  
or near the present chain ferry known as the "Sleightsburgh  
Ferry," thence over said creek into the city of Kingston by suit-  
able bridge to be constructed and maintained by the commission,  
running thence northerly from the city of Kingston to a point to  
be determined by the commission, on the dividing line between  
Greene and Ulster counties, running thence northerly through the  
eastern portion of Greene county to points at or near Catskill,  
Athens and Coxsackie, to a point to be determined by the commis-  
sion, on the dividing line between Albany and Greene counties,  
running thence northerly to the city of Albany.

Amended by L. 1912, ch. 157.

**Route 3-a.** Commencing at a point, to be determined by the commission, on the Delaware river at or near the city of Port Jervis in Orange county, running thence northwesterly along the Delaware river, as nearly as practicable, to a point to be determined by the commission on the dividing line between Sullivan and Delaware counties, thence to the village of Hancock, connecting with route number four.

Amended by L. 1911, ch. 265.

**Route 4.** Commencing at a point to be determined by the commission on route number three, running thence through Orange county by the way of Middletown to a point to be determined by the commission, on the dividing line between Sullivan and Orange counties, running thence westerly and northerly through Sullivan county by the way of Monticello to a point to be determined by the commission, on the dividing line between Delaware and Sullivan counties, thence to Deposit, on the dividing line between Broome and Delaware counties, running thence westerly by the way of Windsor to the city of Binghamton, running thence westerly from the city of Binghamton by the way of Lestershire and Endicott, to a point to be determined by the commission, on the dividing line between Tioga and Broome counties, running thence westerly through the southern portion of Tioga county, to a point to be determined by the commission, on the dividing line between Chemung and Tioga counties, running thence westerly and northwesterly through the southern portion of Chemung county, to the city of Elmira, running thence northerly from the city of Elmira to a point at or near Horseheads, running thence westerly to a point to be determined by the commission on the dividing line between Steuben and Chemung counties, running thence westerly and northwesterly by the way of Corning, Addison and Canisteo, to the city of Hornell, running thence northwesterly and southwesterly from the city of Hornell to a point at or near Almond on the dividing line between Allegany and Steuben counties, running thence southwesterly to Wellsville, running thence northwesterly and westerly by the way of Belmont, Belvidere and Friendship and Cuba, to a point to be determined by the commission on the dividing line between Cattaraugus and Allegany counties, running thence southwesterly to the city of Olean, running thence westerly and northwesterly from the city of Olean by the way of Salamanca, Little Valley, Napoli and Randolph, to a point to be determined by the commission, on the dividing line between

Chautauqua and Cattaraugus counties, running thence westerly to the city of Jamestown, thence northwesterly by the way of Mayville, to Westfield.

Amended by L. 1911, ch. 747.

Route 4-a. Beginning at the city of Binghamton, on route number four, running thence northerly and northwesterly to Whitney Point, running thence northwesterly along the Tioughnioga river, by way of Lisle and Killawog, through a point to be determined by the highway commission on the dividing line between Broome and Cortland counties, to Marathon, and from thence through Messengerville and Blodgett Mills, to Cortland, as determined by the commission, connecting thereat with route number nine.

Amended by L. 1911, ch. 807.

Route 4-b. Beginning at a point on route number four to be determined by the commission, at or near Canisteo, in the county of Steuben, running thence southerly by way of Greenwood to Rexville; running thence southerly and westerly to a point to be determined by the commission on the dividing line between the counties of Steuben and Allegany; and running thence southerly and westerly to Whitesville, Allegany county.

Amended by L. 1912, ch. 474.

Route 5. Commencing at the city of Kingston, running thence to a point on the boulevard to be erected by the city of New York near the present village of West Hurley, thence northerly and westerly by the way of Woodstock, Bearsville and Pine Hill, to a point to be determined by the commission, on the dividing line between Delaware and Ulster counties, running thence westerly to Margaretville, running thence northerly by the way of Roxbury to Grand Gorge, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schoharie and Delaware counties, running thence northwesterly and westerly to a point to be determined by the commission, on the dividing line between Delaware and Schoharie counties, running thence northwesterly and westerly by the way of Harpersfield, North Kortright and Davenport, to a point to be determined by the commission, on the dividing line between Otsego and Delaware counties, running thence to Oneonta, Otsego county, running thence northeasterly along route number seven to Colliers; running thence northerly in Otsego county by the way of Cooperstown and Richfield Springs to a point to be determined by the

commission, on the dividing line between Herkimer and Otsego counties; running thence northerly to Mohawk connecting with route number six.

Amended by L. 1910, ch. 573.

Route 5-a. Commencing at a point on route number three, in the village of Catskill; thence northwesterly to the village of Cairo; thence by South Durham through East Windham to the village of Windham; thence westerly through the villages of Ashland and Prattsville to a point, to be determined by the commission, on the dividing line between Greene and Delaware counties.

Amended by L. 1911, ch. 616.

Route 5-b. Commencing at a point on route number five-a, in the village of Cairo, in the county of Greene; thence westerly through the village of East Durham to the village of Durham; thence northerly to a point to be determined by the commission on the dividing line between Greene and Albany counties; thence northerly to the village of Cooksburg, and connecting thereat with a highway heretofore improved by the state leading from Potter's Hollow to such village.

Amended by L. 1911, ch. 784.

Route 5-c. Commencing in the village of Palenville, so-called, on the northerly side of the creek at a point where the Kaaterskill road intersects the Catskill-Tannersville highway in the town of Catskill, Greene county; thence westerly through the Kaaterskill clove to a point where the easterly entrance leading to Twilight park intersects said Catskill-Tannersville highway, and over a route to be determined by the commission.

§ 2. The sum of one hundred and ninety thousand dollars (\$190,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury, not otherwise appropriated, to be expended, except as herein otherwise provided, in the manner provided for by article six of the highway law, for the construction and improvement of state route five-c, as established by this act. The state commission of highways may construct and improve such route by contract or by the purchase of material and securing of labor in the open market, or partly by each method, or wholly or partly by forces of the state department of highways. If such construction and improvement be made wholly by contract, maps, specifications and estimates shall be made, proposals advertised for and the contract awarded as provided in

article six of the highway law, and if specified parts or items only of such construction and improvement be done by contract the provisions of such article of the highway law shall govern the making of maps, estimates and specifications and the awarding of contracts therefor so far as they may be made applicable. Such commission may, in its discretion, use convict labor, as hereinafter provided, in the construction and improvement of such route or parts thereof, or with respect to certain items of the work. The superintendent of state prisons is hereby authorized to furnish available convict labor therefor, upon the application of such commission. The expense of maintenance of convicts while so employed shall be paid from the moneys herein appropriated in the same manner as other expenses of such construction and improvement. The officers and guards of the prison department shall have the charge and custody of such convicts, but the engineers and foremen of the highway department shall direct the work to be done; and nothing herein contained shall be construed to authorize the employment of such convict labor for a person, firm, association or corporation contracting with such commission for the performance of any part or item of such construction or improvement. Moneys expended directly for material, labor and cost of maintenance of convicts shall be paid out by the state treasurer upon the audit and warrant of the comptroller upon vouchers approved by such commission.

Amended by L. 1914, ch. 68.

Route 6. Commencing at a point to be determined by the commission at the city of Albany, running thence northwesterly to a point to be determined by the commission, on the dividing line between Schenectady and Albany counties, running thence northwesterly to the city of Schenectady, running thence northwesterly from the city of Schenectady to a point to be determined by the commission, on the dividing line between Montgomery and Schenectady counties, to the city of Amsterdam, thence crossing the Mohawk river to the south side, thence along the south side through Fort Hunter to the village of Fultonville, thence across the river to the north side, running thence westerly and northwesterly through Montgomery county by the way of Fonda and St. Johnsville, to a point at or near East Creek, on the dividing line between Herkimer and Montgomery counties, running thence westerly and northwesterly by the way of Little Falls

and Herkimer, from Herkimer westerly by the way of Mohawk, Ilion and Frankfort to a point to be determined by the commission, on the dividing line between Herkimer and Oneida counties, and thence to the city of Utica, running thence westerly from the city of Utica to Oneida, on the dividing line between Madison and Oneida counties, running thence westerly by the way of Chittenango, to a point to be determined by the commission on the dividing line between Onondaga and Madison counties, running thence westerly by the way of Fayetteville, to the city of Syracuse, running thence from the city of Syracuse by the way of Camillus and Elbridge, to a point to be determined by the commission, on the dividing line between Cayuga and Onondaga counties, running thence southwesterly to the city of Auburn, running thence from the city of Auburn to a point to be determined by the commission on the dividing line between Seneca and Cayuga counties, running thence westerly to Seneca Falls, thence southerly through the village of Seneca Falls to the south side of Seneca lake outlet, thence westerly on the south side of Seneca lake outlet to a point at the foot of Seneca lake, running thence westerly to a point to be determined by the commission on the dividing line between Ontario and Seneca counties, running thence westerly to Geneva, running thence westerly from Geneva to Canandaigua, running thence westerly to a point to be determined by the commission, on the dividing line between Livingston and Ontario counties, running thence westerly by the way of Avon and Caledonia, to a point to be determined by the commission, on the dividing line between Genesee and Livingston counties, running thence westerly by the way of Batavia, to a point to be determined by the commission, on the dividing line between Erie and Genesee counties, running thence westerly to the city of Buffalo, Erie county.

Amended by L. 1910, ch. 573.

Amended by L. 1911, ch. 472.

Route 6-a. Commencing at and intersecting route number six in the town of Tyre, in the county of Seneca, at a point known as Dutcher's Corners, thence westerly along the road known as the old free-bridge state road through the towns of Tyre and Junius to a point, to be determined by the commission, on the dividing line between the counties of Seneca and Ontario near the railroad station at West Junius on the Pennsylvania division of the New

York Central and Hudson River railroad running from Lyons to Geneva; thence, passing such station, along said old free-bridge state road to the village of Phelps.

Amended by L. 1911, ch. 660.

Route 7. Commencing at a point to be determined by the commission on the dividing line between the town of Binghamton in Broome county, and Pennsylvania, running thence northerly to the city of Binghamton; running thence northerly and northeasterly from the city of Binghamton on the east side of Chenango river, by the way of Port Crane, Sanitaria Springs and Harpursville, to Nineveh, on the dividing line between Chenango and Broome counties, running thence northeasterly along the Susquehanna valley, to a point to be determined by the commission, on the dividing line between Chenango and Otsego counties, at or near Sidney, running thence northeasterly along the Susquehanna valley to Oneonta, running thence northeasterly from Oneonta by way of Maryland and Worcester, to a point to be determined by the commission, on the dividing line between Schoharie and Otsego counties, running thence easterly by the way of Cobleskill to a point to be determined by the commission, on the dividing line between Albany and Schoharie counties at or near West Berne, to Berne, thence to East Berne, thence to a point at Thompson's Lake, known as Secor's Church, thence to the top of the present so-called "Indian Ladder" road, thence in a southerly direction to New Salem, and thence to New Scotland, Slingerlands, and to the city of Albany.

Amended by L. 1911, ch. 751.

Route 7-a. Commencing at the city of Schenectady on route number six and running southwesterly to Duanesburg, in the county of Schenectady; thence in a general southwesterly direction, along a course to be determined by the commission, to a point to be determined by the commission upon route number seven in the town of Schoharie in Schoharie county.

Amended by L. 1912, ch. 183.

Route 8. Commencing at the city of Binghamton, running thence northerly on the west side of the Chenango river to Chenango Forks, on the dividing line between Chenango and Broome counties, running thence along the west bank of the Chenango river to North Norwich, running thence northerly by the way of Sherburne to Earlville, on the dividing line between Madison

and Chenango counties, running thence northerly by the way of Hamilton and Bouckville, to a point at or near Oriskany Falls, on the dividing line between Oneida and Madison counties, running thence northeasterly by the way of Deansboro to a point to be determined by the commission connecting with route number six.

Route 9. Commencing at a point to be determined by the commission, at or near Horseheads, Chemung county, New York, on route number four, running thence northerly and northeasterly by the way of Horseheads, Breesport and Erin to a point to be determined by the commission on the dividing line between Tioga and Chemung counties, running thence easterly and northeasterly by the way of North Spencer to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northerly to the city of Ithaca, running thence northeasterly by the way of a point to be determined by the commission at or near Dryden to a point to be determined by the commission on the dividing line between Cortland and Tompkins counties, running thence northeasterly to Cortland, thence northeasterly by the way of Truxton to a point to be determined by the commission on the dividing line between Madison and Cortland counties at or near De Ruyter, thence northerly to Cazenovia, thence easterly by the way of Morrisville to a point at or near Bouckville on route number eight.

Route 10. Beginning at the city of Syracuse, running thence southerly to a point to be determined by the commission on the dividing line between Cortland and Onondaga counties, running thence southerly by the way of Homer to Cortland, thence south-easterly by the way of McGrawville, Solon and Willet to a point to be determined by the commission on the dividing line between Chenango and Cortland counties, thence southeasterly by the way of Smithville Flats to Greene, thence easterly by the way of Coventry to Coventryville, thence southeasterly to Afton, connecting with route number seven.

Route 11. Commencing at the city of Ithaca, running thence northerly to a point to be determined by the commission, on the dividing line between Cayuga and Tompkins counties, running thence northerly to the city of Auburn.

Route 12. Commencing at a point at or near Horseheads, at a point to be determined by the commission, running thence north-easterly to a point to be determined by the commission, on the divid-

ing line between Schuyler and Chemung counties, running thence northerly by the way of Watkins, to a point to be determined by the commission, on the dividing line between Yates and Schuyler counties, running thence northwesterly by the way of Dundee, to the village of Penn Yan, running thence northerly to a point on the dividing line between Ontario and Yates counties, running thence northerly to the city of Geneva, running thence northerly from the city of Geneva, to a point to be determined by the commission, on the dividing line between Wayne and Ontario counties, running thence northerly to Lyons, connecting with route number twenty.

Route 13. Commencing at Bath, Steuben county, running thence northeasterly by the way of Hammondsport to a point to be determined by the commission on the dividing line between Schuyler and Steuben counties, thence northeasterly to a point to be determined by the commission on the dividing line between Yates and Schuyler counties, thence northeasterly to Dundee on route number twelve.

Route 14. Commencing at Corning, Steuben county, running thence northwesterly by the way of Bath, Avoca to Cohocton, running thence northerly from Cohocton, to a point to be determined by the commission on the dividing line between Ontario and Steuben counties, running thence northeasterly to Naples, running thence northerly from Naples to a point to be determined by the commission, connecting with route number six, running thence along route number six, to Black's Corners, and from thence to Holcomb; running thence northwesterly to a point to be determined by the commission on the dividing line between Monroe and Ontario counties, thence northerly to Pittsford, thence westerly, then northerly to the city of Rochester.

Amended by L. 1910, ch. 648.

Route 15. Commencing at the junction of Big Creek road and Seneca street road in the town of Hornellsville, Steuben county, running thence northwesterly within the county of Steuben to and through the village of Arkport, and northerly, within such county, along the road on the easterly side of Arkport valley, known as Dansville road, through Doty's Corners and by way of the Stony Brook Glen road in the town of Dansville, Steuben county, to the Livingston county line; thence through the town of North Dansville in Livingston county to the village of Dansville; thence

northerly to the intersection of Gibson and South streets; thence northeasterly along Gibson street to Main street; thence northwesterly along Main street to the intersection of Main and Exchange streets; thence southwesterly along Exchange and South streets to the intersection of South and Gibson streets, and from the intersection of Main and Exchange streets along the highway from Dansville to Groveland station on the east side of the Genesee valley through the towns of North \*Danville, Sparta and Groveland to Groveland Station; thence northerly along the highway leading from Groveland station to Geneseo on the east side of the Genesee valley in the town of Groveland to its intersection with the improved county highway running from Mount Morris to Geneseo; thence westerly through the towns of Groveland and Mount Morris to the village of Mount Morris; thence through the village of Mount Morris northwesterly and northerly by the way of the villages of Moscow and York Center to a point on route number six in the village of Caledonia; thence easterly along route six to Canawaugus; thence northerly to a point to be determined by the commission on the dividing line between Livingston and Monroe counties, thence northerly to route sixteen in Scottsville; also from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county.

§ 2. The moneys appropriated by chapter five hundred and fifty-nine of the laws of nineteen hundred and eleven, for the improvement and completion of that part of route number fifteen between Hornell and to and through the village of Dansville, shall be immediately available for the construction of such route as hereby amended, including that portion thereof from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county.

Amended by L. 1912, ch. 473.

Route 16. Commencing at the village of Cuba, Allegany county, running thence northeasterly by the way of Belfast and Caneadea,

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\* So in original.

to a point to be determined by the commission, on the dividing line between Wyoming and Allegany counties, running thence northerly by the way of Pike, Gainesville and Rock Glen to Warsaw, running thence northerly to a point to be determined by the commission, on the dividing line between Genesee and Wyoming counties, running thence northerly to the village of Le Roy, running thence along route number six to Caledonia, running thence northerly to a point to be determined by the commission on the dividing line between Monroe and Livingston counties, running thence northerly by the way of Scottsville to the city of Rochester.

Route 17. Commencing at a point to be determined by the commission on route number four at or near Hinsdale, running thence northerly by the way of Franklinville and Machias to a point to be determined by the commission near the dividing lines of Erie, Wyoming and Cattaraugus counties, running thence northwesterly by the way of East Aurora to the city of Buffalo.

Route 18. Commencing at a point to be determined by the commission, on the dividing line between Ripley, Chautauqua county, and the state of Pennsylvania, running thence northeasterly by the way of Westfield, Brocton, Fredonia, along the old Buffalo and Erie road, to a point to be determined by the commission, on the dividing line between Erie and Chautauqua counties, running thence northeasterly and northerly to the city of Buffalo, running thence northerly from the city of Buffalo to North Tonawanda, running thence northwesterly and westerly from North Tonawanda to the city of Niagara Falls, running thence northerly from Niagara Falls by the way of Lewiston to a point near the mouth of Niagara river, Niagara county.

Amended by L. 1911, ch. 757.

Route 19. Commencing at the city of Buffalo, running thence easterly to Marilla, thence southerly to Wales Center, thence easterly to a point to be determined by the commission on the dividing line between Wyoming and Erie counties, running thence easterly to Varysburg, thence northerly by the way of Attica to a point to be determined by the commission on the dividing line between Genesee and Wyoming counties, running thence northeasterly to Batavia, Genesee county, connecting with route number six.

Route 20. Commencing at a point on route number six, at or near Elbridge, in Onondaga county, running thence northerly to Jordan and westerly to a point to be determined by the com-

mission, on the dividing line between Cayuga and Onondaga counties, running thence northwesterly and southwesterly by the way of Port Byron and Montezuma, to a point to be determined by the commission, at or near the dividing lines between Wayne, Seneca and Cayuga counties, running thence northwesterly and westerly from Savannah, Clyde, Lyons, Palmyra, and Macedon to a point to be determined by the commission, on the dividing line between Monroe and Wayne counties, running thence northwest-  
erly to the city of Rochester, Monroe county.

Route 21. Commencing at a point on the Hudson river at or near Albany and running thence easterly to a point at or near Sand Lake, running thence southerly to a point at or near Nassau, in Rensselaer county, running thence southeasterly to a point to be determined by the commission, on the dividing line between Columbia and Rensselaer counties, to a point to be determined by the commission, on the dividing line between Columbia county and the state of Massachusetts.

Route 22. Commencing at a point in Rensselaer county at or near the city of Troy, running thence northeasterly by the way of Raymertown, to Potter Hill, running thence northerly through Hoosick Falls, to a point at or near Eagle Bridge, on the dividing line between Washington and Rensselaer counties, running thence northerly by the way of Cambridge, Salem and Granville by the way of Whitehall and the shore road along Lake Champlain to Putnam; and commencing at a point on route twenty-five at Riparius in Warren county, and running thence to a point to be determined by the commission on the dividing line between Essex and Warren counties, and running thence northerly by way of Schroon Lake village to Elizabethtown, running thence westerly to Keene, thence northerly to Ausable Forks and a point on the dividing line between Clinton and Essex counties, thence northeasterly to a point at or near Ausable Chasm, thence northerly by the way of Plattsburgh and Chazy to Rouses Point.

Route 22-a. Commencing at a point at the end of county highway petition number sixteen hundred and fifty-one, in the village of Newman and running thence northeasterly through Wilmington Notch and High Falls to Hathaway Corners, thence northerly across Ausable river to Nye's Corners, thence easterly through the village of Wilmington to the village of Jay connecting with route number twenty-two, Essex county.

Amended by L. 1914, ch. 201.

Route 22-b. Commencing at a point on county highway number eight hundred and ninety-one outside of the village of Ticonderoga and extending westerly through the towns of Ticonderoga and Schroon through the village of Chilson, to a point on route number twenty-two at or near Severance hill, being within the boundaries of the county of Essex.

Added by L. 1913, ch. 785.

Route 22-c. Commencing at a point on county highway number ten hundred and twenty-three, and running thence northerly and westerly to Pottersville on the easterly side of the Schroon river, terminating at route number twenty-two, all within the boundaries of Warren county.

Added by L. 1913, ch. 785.

Route 23. Commencing on the Cherry Valley turnpike at the westerly line of the village of West Winfield near the intersection of the three counties, Otsego, Oneida and Herkimer, running thence westerly to the village of Bridgewater, running thence northerly to the city of Utica, running thence northeasterly through the town of Deerfield to a point to be determined by the commission on the dividing line between Herkimer and Oneida counties, at or near Poland, there intersecting route number twenty-six, running thence northeasterly through Cold Brook, Wilmurt and Nobleboro to the Hamilton county line there joining the county highway of Hamilton county which leads through Morehouseville to Lake Pleasant, joining route twenty-four at Lake Pleasant and running thereon to Speculator, running thence northerly by way of Lewey Lake to Indian Lake village; thence northwesterly to Blue Mountain Lake there joining route twenty-five.

Amended by L. 1914, ch. 47.

Route 23-a. Commencing on route six in the village of Ilion at its intersection with Otsego street, running thence southerly through Cedarville, Chepachet and to the westerly line of the village of West Winfield, there connecting with route twenty-three.

Amended by L. 1912, ch. 535.

Route 24. Commencing at a point on route number six at Fonda, Montgomery county, running thence northerly to a point to be determined by the commission on the dividing line between Fulton and Montgomery counties, running thence northerly by the

way of Johnstown and Gloversville to Northville, running thence northerly to a point to be determined by the commission on the dividing line between the counties of Hamilton and Fulton, running thence northerly to Lake Pleasant.

Route 25. Commencing at Whitesboro near Utica on route number twenty-eight in Oneida county, running thence northerly, by the way of Marcy, Holland Patent, Remsen, Alder Creek and White Lake Corners, to a point to be determined by the commission, at or near the dividing lines between Herkimer, Lewis and Oneida counties, running thence northeasterly by the way of Fulton Chain, and on or near the highways laid out, to a point to be determined by the commission, on the dividing line between Hamilton and Herkimer counties, running thence easterly by the way of Raquette Lake, and on the south shore of Raquette Lake, running thence northeasterly to Blue Mountain Lake, running thence northerly to Long Lake, running thence easterly to a point to be determined by the commission, on the dividing line between Essex and Hamilton counties, running thence easterly to Newcomb, running thence southeasterly by the way of Minerva, to a point to be determined by the commission, on the dividing line between Warren and Essex counties, running thence by the way of North Creek, Riparius and Warrensburg to Lake George, running thence southerly to a point to be determined by the commission on the dividing line between Saratoga and Warren counties at or near Glens Falls, running thence southerly by the way of Saratoga Springs to Ballston Spa, running thence southeasterly to a point to be determined by the commission on the dividing line between Albany and Saratoga counties, running thence southerly to a point to be determined by the commission at or near the city of Albany.

Route 26. Commencing in the village of Mohawk near the intersection of routes five and six, thence running easterly through Jacksonburg to Little Falls, thence running northwesterly through Eatonsville, Middleville, Newport and Poland, across the corner of Oneida county, thence in Herkimer county to a point on the dividing line between Oneida and Herkimer counties near Gravesville, thence by the way of Trenton Falls to join route number twenty-five at or near Trenton.

Amended by L. 1910, ch. 573.

Route 27. Commencing at a point on route number twenty-five, to be determined by the commission near Alder Creek, running

thence northwesterly by way of Booneville,\* to a point on the dividing line between Lewis and Oneida counties, running thence northerly by the way of Lowville, to a point at or near Carthage, on the dividing line between Jefferson and Lewis counties, running thence northwesterly and westerly to the city of Watertown, running thence northwesterly from the city of Watertown to Clayton, thence northeasterly to Alexandria Bay, Jefferson county.

Route 28. Commencing at the city of Utica, Oneida county, running thence northwesterly to Rome, running thence northwesterly from Rome, by the way of Camden, to a point to be determined by the commission, on the dividing line between Oswego and Oneida counties, running thence northwesterly by the way of Parish to Union Square, Oswego county.

Route 29. Commencing at Rome, running thence southwesterly to Oneida, being a point on the dividing line between Madison and Oneida counties.

Route 30. Commencing at Rouses Point, in Clinton county, running thence westerly through the northern part of Clinton county, to a point to be determined by the commission, on the dividing line between Franklin and Clinton counties, running thence westerly by the way of Burke, Malone and Moira, to a point to be determined by the commission, on the dividing line between Saint Lawrence and Franklin counties, running thence westerly to Lawrenceville, running thence southerly to a point at or near Nicholville, running thence westerly and southwesterly by the ways of Potsdam, Canton and Gouverneur, to a point to be determined by the commission, on the dividing line between Jefferson and Saint Lawrence counties, running thence southwesterly by the way of Philadelphia to Watertown, running thence southerly from Watertown, by the way of Adams and Pierrepont Manor, to a point to be determined by the commission on the dividing line between Oswego and Jefferson counties, running thence southerly and southwesterly and westerly by the way of Pulaski and Union Square to Oswego, running thence southerly from Oswego by way of Hannibal to a point to be determined by the commission, on the dividing line between Cayuga and Oswego counties, running thence southwesterly through the northern part of Cayuga county to a point to be determined by the commission on the dividing line between Wayne and Cayuga counties, running thence southwesterly and westerly by the way of Red Creek, Wolcott, Alton, Sodus, Williamson and Ontario to a point to be

\* So in original.

determined by the commission on the dividing line between Monroe and Wayne counties, running thence southwesterly to the city of Rochester, running thence westerly from the city of Rochester by way of Spencerport, to a point to be determined by the commission, on the dividing line between Orleans and Monroe counties, running thence westerly to points at Albion and Medina, running thence northwesterly and northerly to Ridgway on the Ridge road; thence westerly along the Ridge road to Jeddox, Johnson Creek, Hartland Corners and Ridge Road Settlement; thence southwesterly to Wright's Corners; thence westerly through Warren's Corners and Cambria to a point two and five-tenths miles directly north of Pekin on the Ridge road; thence southerly along the Town Line road through Pekin to a point on the Saunders Settlement road to Sanborn; thence westerly and southwesterly along the Saunders Settlement road to Niagara Falls to connect with route number eighteen; continuing on the River road at the easterly city limits of the city of Niagara Falls and continuing along said river road to the northerly city limits of the city of North Tonawanda and thence southerly along said River road and Main street to the place of intersection of Island street in said city of North Tonawanda; also continuing a spur from the point in Center street in the village of Medina where said route thirty as above described turns toward the north, and from said point in said village of Medina continuing said spur westerly along Center street and the country highway to and through the village of Middleport and thence westerly along the settlement and canal roads to and through Gasport and thence continuing southerly to McNalls Corners and thence continuing westerly along the Lewiston road to the city of Lockport, in Niagara county. Also continuing a spur from the point in the Ridge road in the town of Ridgway where said route thirty as above described turns toward the west, and from said point at said Ridgway continuing said spur easterly along said Ridge road to the dividing line between Orleans and Monroe counties.

Amended by L. 1914, ch. 276.

30-a. Commencing at the point mentioned in the description of route twenty-seven at or near Carthage, on the dividing line between Jefferson and Lewis counties, running thence northerly and northwesterly to Antwerp in Jefferson county, terminating at and intersecting route thirty at or near Antwerp aforesaid.

Added by L. 1910, ch. 650.

Route 31. Commencing at Malone, Franklin county, running thence southerly by the way of a point at or near Duane and Meacham Lake to Saranac Junction.

Route 32. Commencing at Lawrenceville in Saint Lawrence county, running thence northerly to North Lawrence, running thence westerly to Brasher Falls, running thence southwesterly to Winthrop, running thence northerly to Massena, running thence northerly on the Town Line road between the towns of Massena and Louisville to the Saint Lawrence river road, running thence westerly and southwesterly on the Saint Lawrence river road to the village of Waddington, running thence westerly and southwesterly on the roads known as the Sucker Brook and Van Rensselaer roads to the end of the boulevard at the corporation line of the city of Ogdensburg.

Amended by L. 1911, ch. 179.

Route 33. Commencing at Syracuse, running thence northerly to a point to be determined by the commission, on the dividing line between Oswego and Onondaga counties, running thence northerly by the way of Central Square to a point at or near Colesse on route number twenty-eight.

Route 34. Commencing at the city of Oswego on the east side of the river, running thence by the way of Fulton through Phoenix to a point to be determined by the commission on the dividing line between Onondaga and Oswego counties, running thence by the way of Liverpool to Syracuse.

Route 35. Commencing at a point to be determined by the commission on the dividing line between Nassau and Queens counties, running thence easterly through the northern portion of Nassau county to a point to be determined by the commission on the dividing line between Suffolk and Nassau counties, running thence easterly by the way of Jericho turnpike to Smithtown branch, Saint James, Port Jefferson and Wading River to Riverhead, running thence southerly to West Hampton, running thence westerly by the way of south country road to Patchogue, Sayville, Islip, Bay Shore and Babylon to Amityville, running thence westerly to a point to be determined by the commission on the dividing line between Nassau and Suffolk counties, running thence westerly through the southern portion of Nassau county to a point to be determined by the commission on the dividing line between Queens and Nassau counties.

Route 36. Commencing at Owego in Tioga county, running thence northerly to a point to be determined by the commission on the dividing line between Tompkins and Tioga counties, running thence northwesterly to the city of Ithaca, running thence northwesterly from the city of Ithaca to Trumansburg, at or near the dividing line between Seneca and Tompkins counties, running thence northwesterly and northerly by the way of Ovid to a point to be determined by the commission on route number six.

Route 37. Commencing at a point on route twenty-six at Dolgeville, running thence easterly along the old state road by way of Oppenheim, Lasellville, \*Garoga and Rockwood to the city of Johnstown in Fulton county, running thence easterly by way of West Perth to Perth Center, thence in a northerly direction to Broadalbin by way of Vail Mills, thence easterly through Mills Corners to a point to be determined by the commission on the dividing line between Saratoga and Fulton counties, thence easterly through Whiteside Corners, Greens Corners, Mosherville, East Galway, Rock City Falls, and North Milton to Saratoga Springs, connecting there with route number twenty-five.

Amended by L. 1912, ch. 475.

Route 37-a. Beginning at the village of Ballston Spa, on route twenty-five, running thence westerly along the town line road between the towns of Ballston and Milton, through Tibbetts Corners, Harmony Corners and Pettits Corners to Scotch church, and thence northerly through Galway village, connecting with route thirty-seven at General Carpentier mansion.

Route 37-b. Beginning at the hamlet of Malta, in the town of Malta, Saratoga county, and running thence westerly to East Line; thence northwesterly to Corps Corners; thence northerly through V Corners to the village of Ballston Spa.

Amended by L. 1912, ch. 542.

Route 38. Commencing at such point in or near the village of Schoharie, in the county of Schoharie, in the line of route number seven as the commission may determine; running thence southerly through the towns of Schoharie, Middleburg, Fulton, Blenheim, Gilboa and Conesville to, and intersecting route number five, at a point to be determined by the commission.

Added by L. 1909, ch. 504.

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\* So in original.

Route 38-a. Commencing at the village of Cobleskill, Schoharie county, upon State Route 7, and running thence northwesterly, or westerly and northerly, along a course to be determined by the Commission to Sharon Springs, connecting thereat with an improved stone road leading northerly from Sharon Springs.

Added by L. 1912, ch. 179.

Route 39. Commencing at a point on route twenty-five in the county of Saratoga at or near Ballston lake; thence southwesterly to a point to be determined by the commission on the dividing line between the counties of Saratoga and Schenectady; thence southwesterly to a point at or near the city of Schenectady connecting with route six.

Added by L. 1910, ch. 649.

Route 39-a. Commencing at a point to be determined by the commission on route nine, running thence northerly through the hamlet of Sullivanville, running thence through Bacon Hollow to a point to be determined by the commission on the dividing line between Chemung and Schuyler counties, running thence in a general easterly direction to a point to be determined by the commission on the dividing line between Schuyler and Tompkins counties, running thence northeasterly through Pony Hollow and the village of Newfield to connect with route thirty-six.

Amended by L. 1911, ch. 531.

Route 39-b. Commencing at a point on route number three at or near the village of Nyack, in Rockland county; running thence westerly and northerly through Rockland county, by way of Suffern, to a point to be determined by the commission on the dividing line between Rockland and Orange counties; thence through Orange county to a point to be determined by the commission on route number four.

Amended by L. 1911, ch. 662.

Route 41. Beginning on the dividing line between the city and county of New York and the town of Pelham in the county of Westchester, running thence northeasterly along the Shore road in the town of Pelham to the city of New Rochelle, and from the city of New Rochelle along the Boston post road through the towns of Mamaroneck and Rye to the Connecticut boundary line; and also beginning on the said dividing line between the city of New York and the town of Pelham and running thence northerly along the Boston post road through the town of Pelham to the city of New Rochelle.

Amended by L. 1911, ch. 395.

Route 42. Beginning at the city of Schenectady at trunk line six and extending thence southeasterly along the following highways: Troy-Schenectady, section number one; Troy-Schenectady, section number two; Troy-Schenectady, section number three; Troy-Schenectady, section number four; Watervliet-Nineteenth street; thence along Nineteenth street to and across the bridge at the Troy and West Troy Bridge Company to Congress street in the city of Troy; thence easterly along Congress street to Pawling avenue; thence along Pawling avenue to Pinewoods avenue; thence along Pinewoods avenue to Eagle Mills connecting with Brunswick-Turnpike number two hundred and twenty-seven; thence to Quackenkill, Grafton and Petersburg, to a point on the state line of Massachusetts, to be determined by the commission.

Amended by L. 1914, ch. 376.

Route 43. Beginning at Main street in the village of Mount Morris, running thence southwesterly along what is known as the state road to the village of Nunda, in Livingston county, thence along what is known as the Oakland-Portage road to Portage bridge and Letchworth park.

Amended by L. 1911, ch. 166.

Route 43.\* Commencing at a point at or near the village of Stillwater in Saratoga county, running thence northerly and northwesterly through Bemis Heights and the Saratoga battlefield to Quaker Springs, running thence northerly and northeasterly through Victory Mills, thence to Schuylerville by way of Creamery Hill to Broad street; thence northerly to Spring street; and thence westerly until it connects with county highway number two hundred and forty-four.

Amended by L. 1911, ch. 259.

Route 45. Commencing at a point on route twelve in the village of Watkins and running thence easterly and thence northerly on the east shore of Seneca lake through the hamlets of Hector and North Hector to a point on the dividing line of Schuyler and Seneca counties, thence northeasterly through the hamlet of Caywood to the village of Lodi and thence easterly to the village of Interlaken, connecting with route thirty-six.

Amended by L. 1912, ch. 57.

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\* So in original.

Route 46. Commencing at a point on route number fourteen at or near Coopers Plains in Steuben county and running thence northerly to a point on the dividing line of Steuben and Schuyler counties; thence northeasterly through the village of Monterey and easterly by the valley road through the hamlet of Townsend; thence northeasterly following Old Folks picnic ground road to the village of Watkins, connecting with route number twelve; thence southerly on route twelve to its intersection with route number forty-five; thence along said route forty-five to a point about one and one-half miles from the village of Burdett; thence northeasterly to the village of Burdett; thence easterly and northeasterly through Bennettsburg to Reynoldsville; thence south-easterly to Mecklenburg; thence northeasterly to Perry City; thence to a point on the dividing line between Schuyler and Tompkins counties; thence northeasterly to the village of Trumansburg, connecting with route number thirty-six.

Amended by L. 1911, ch. 320.

§ 121. Apportionment of mileage of state highways to be constructed or improved. The mileage of state highways to be constructed or improved from the amount available from the sale of bonds issued as provided by chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, and appropriated for the construction or improvement of state highways, shall be equitably apportioned by the commission among the several counties without discrimination; but not more than one-half of the amount appropriated each year from the proceeds of the sale of such bonds shall be expended under this article for the construction and improvement of state highways. In making the apportionment between counties the commission shall take into consideration the mileage which may be constructed from the amount to be expended under this article in each county for the construction or improvement of county highways, together with the mileage of state and county highways theretofore constructed out of moneys derived from the sale of bonds issued as above provided.

Amended by L. 1911, ch. 646.

Report of joint legislative committee on highways, 1908, contains the following statement in respect to this section: "Article 7, sec. 12 of the Constitution, which authorizes the creation of a debt not exceeding fifty million

dollars for the improvement of highways provides that such highway shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. It is assumed in this section that the Commission in apportioning county highways among the counties will take into consideration those highways which are declared by this chapter to be State highways to be improved at the sole expense of the State. The evident purpose of the Constitution was to provide for an equitable apportionment of the highways among the counties whether they be constructed or improved by the State, or jointly by the State, county and town. An equitable apportionment of the highways to be constructed from the proceeds of the bonds issued under the constitutional provision must necessarily include both State and county highways. The Commission in exercising the authority conferred upon it by this section will be governed both by the statute and the Constitution."

By an opinion of the Attorney-General under date of August 7, 1909, it was held that a county cannot acquire title for new rights of way for State or county highways until an amendment to the Constitution allowing such title to be acquired by the county is made. The opinion says in part, "I do not think the passage of section 120 of the Highway Law changes the situation as to State roads. The routes therein laid out can be followed, and the roads improved along any and all of them except where there are new routes, or deviate from old established ways in the forest preserve, but it is too well settled to require the citation of any authorities, that the Legislature cannot overrule an expressed provision of the Constitution, and while it is more than likely that it was not originally intended to prohibit the laying out and working of highways through the forest preserve, still the language will not bear any other interpretation, and I am, therefore, of the opinion that neither new State or county highways can be cut or worked through any part of the forest preserve until some change has been made in the Constitution."

**§ 122. Construction or improvement of county highways.**—The county highways to be constructed or improved under this article at the joint expense of the state and county shall be those highways in each county determined by the commission to be of sufficient public importance to come within the purposes of this chapter so as to constitute a part of a properly developed system of improved market roads within the county, taking into account the use, location and value of such highways for the purposes of common traffic and travel. Such county highways shall be equitably apportioned by the commission among the several counties without discrimination. In making such apportionment the commission shall take into consideration the total mileage of state highways which shall be hereafter constructed or improved in each county, and also the highways therein which have been constructed or improved prior to the taking effect of this article from funds made available by the issue and sale of bonds as provided in section twelve of article seven of the constitution, so that there shall be an equitable distribution as between the counties of all highways built in whole or in part from such funds.

Amended by L. 1910, ch. 80.

By an opinion of the Attorney-General, under date of April 24, 1912, it was held as follows:

In the case of county highways, the initiative lies with the board of supervisors, which is required to pass a resolution requesting the construction or improvement of a highway over a route to be described in the resolution (section 123), and without its co-operation and agreement as to the route such a highway may not be constructed. (Sections 127-128.)

See opinion of Attorney-General, dated April 25, 1912.

**§ 123. Preliminary resolution of board of supervisors.**—The board of supervisors of any county may pass a resolution stating that public interest demands the improvement of a highway or section thereof within the county, and requesting that it be constructed or improved as provided in this article. Such resolution shall contain a description of such highway or section thereof. Such highway or section thereof shall not include a portion of a highway within a city, except that portion of the cities of Rome and Oneida lying outside of the respective corporation tax districts of said cities, nor any portion of a highway within an incorporated village, unless it be necessary to complete the connection of such highway with a highway already improved or to be improved under this article. The clerk of the board of supervisors shall, within ten days after the passage of such a resolution, transmit a certified copy thereof to the commission.

Amended by L. 1909, ch. 487.

**§ 124. Examination of county highway; approval or disapproval by commission.**—The commission after receipt of such resolution, and at such times as it deems proper, shall examine the highway or section thereof sought to be constructed or improved, and shall determine whether it is of the character specified in section one hundred and twenty-two, and whether the construction or improvement thereof will provide for an equitable apportionment of the highways among the several counties as provided in such section. After such examination the commission shall certify its approval or disapproval of such resolution to the board of supervisors adopting it; if it disapprove thereof it shall certify its reasons therefor.

**§ 125. Maps, plans, specifications and estimates.**—Whenever the commission shall have determined upon the construction or improvement of a state highway, or section thereof, or shall have approved a resolution adopted by a board of supervisors in any county requesting the construction or improvement of a county

highway, or a section thereof, the commission shall direct the division engineer of the division wherein such highway or section thereof is situated to make surveys, and prepare suitable preliminary maps, plans and specifications. Such division engineer shall, subject to the direction and control of the commission, have the following powers and duties in respect to such highways:

1. He shall cause the highway or section thereof designated by the commission, or described in such resolution, to be mapped both in outline and profile.

2. He may provide for a deviation from the line of a highway already existing, if thereby a shorter or more direct highway, or a lessened gradient may be obtained without decreasing the usefulness of the highway.

3. He may provide for the widening of an existing highway.

4. He shall prepare preliminary plans and specifications for the construction or improvement of such highway or section thereof providing for a telford, macadam or gravel roadway, or other suitable construction, taking into consideration climate, soil and materials to be had in the vicinity thereof, and the extent and nature of the traffic likely to be upon such highway, specifying in his judgment the kind of highway a wise economy demands.

5. He shall provide in such plans and specifications for necessary culverts, drains, ditches, waterways, embankments, guard-rails and retaining walls.

6. He may provide therein for the removal or planting of trees, within the boundaries of the highway, when necessary for the preservation thereof.

7. He shall provide therein for the erection of suitable guide boards.

8. He may provide for such other work as may be required to complete the construction or improvement in a proper manner.

9. He shall cause an estimate to be made of the cost of the construction of such highway or section thereof in accordance with such plans and specifications. In making such estimate he shall ascertain with all practical accuracy the quantity of embankment, excavation and masonry, the quantity of all materials to be used and all items of work to be placed under contract and specify the estimated cost thereof.

The Attorney-General, in an opinion rendered October 25, 1912, held that it is doubtful whether the general provision conferred upon the Commission of Highways by section 125 of the Highway Law was sufficiently broad to permit the changing of an established grade of a city street.

See Attorney-General's opinions, dated March 12, 1912.

**§ 126. Submission of maps, plans and specifications to district or county superintendent.**—The commission shall cause the preliminary maps, plans and specifications for either a state or county highway, or a copy thereof, to be presented to the district or county superintendent of the district or county in which such highway or section thereof is situated, who shall personally examine the highway, or section thereof and the proposed maps, plans, and specifications, and shall recommend any modification thereof which in his judgment seems to be necessary and shall report thereon with \* fifteen days to the commission. He shall also take such other action in respect thereto as may be required by law or by the commission.

Amended by L. 1911, ch. 646.

**§ 127. Action of commission in respect to maps, plans, specifications and estimates.**—Upon receiving the report of the district or county superintendent, as provided in the preceding section, the commission shall finally adopt the maps, plans, specifications and estimates which are to be used for the construction or improvement of the state or county highway to be constructed or improved. If such highway be a state highway the commission shall thereupon proceed to advertise and award contracts for the construction or improvement thereof as provided in section one hundred and thirty. If such highway be a county highway the commission shall transmit such plans, specifications and estimates as adopted by them to the board of supervisors of the county from which the resolution proceeded, together with their certificate approving the construction or improvement of the highway or section thereof designated in such resolution.

**§ 128. Final resolution of board of supervisors.**—The board of supervisors, after the receipt of plans, specifications and estimate of a county highway or section thereof, and after such modification thereof as may be made by a majority vote of such board, with the consent of the commission, may approve such plans, specifications and estimate, and adopt a resolution requesting that such county highway or section thereof be constructed or improved under the provisions of this article, in accordance therewith. In the case of a county highway or a section thereof which divides two or more counties, such resolution must be separately adopted by the board of supervisors of each county within which

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\* So in original.

a portion of such highway lies. The form of such resolution shall be prescribed by the commission and shall contain the matter required by this article to be inserted therein. Immediately upon the adoption of such resolution the clerk of the board of supervisors shall transmit a certified copy thereof to the commission. When a board of supervisors has once adopted a resolution providing for the construction or improvement of a highway or a section thereof in accordance with such plans and specifications, no resolution thereafter adopted by such board shall rescind or annul such prior resolution either directly or indirectly, excepting under the advice and with the consent of the commission. Notwithstanding the adoption of such a resolution, the commission may modify such plans, specifications and estimate, prior to the award of a contract therefor and, upon the approval thereof by the board of supervisors as above provided, such highway or section thereof shall be constructed or improved in accordance with such plans, specifications and estimate.

Amended by L. 1909, ch. 240, § 45.

**§ 129. Order of construction of county highways.**—Upon the receipt of such resolution the commission shall proceed with the improvement or construction of such county highway as provided in this article. The construction and improvement of such county highways and sections thereof shall be taken up and carried forward within a county in the consecutive order as determined by the date of the receipt by the commission in each case of the certified copy of the final resolution, so far as is practicable in the opinion of the commission. No such highway shall be placed upon the list of highways to be constructed or improved nor receive a consecutive number on such list, unless such resolution shall appropriate and make immediately available for such construction or improvement the counties' share of the cost thereof.

Amended by L. 1912, ch. 83.

By an opinion of the Attorney-General under date of January 24, 1913, it was held as follows:

Sections 126, 127, 128 and 129 of the Highway Law provide for the approval of estimates for both State and county highways, but no authority to include in an estimate an item not provided under section 125.

**§ 130. Contracts for construction or improvement of highways.**—State and county highways shall be constructed or improved by contract. Upon the completion and final adoption or approval, as provided by law, of the plans, specifications and estimate for

the construction or improvement of a state or county highway, contracts therefor shall be executed as provided herein.

1. *Advertising for proposals.*—The commission shall advertise for proposals for the construction or improvement of such highways or sections thereof according to the plans, specifications and estimate prepared therefor. The advertisement shall be limited to a brief description of the work proposed to be done, with an announcement stating where the maps, plans, specifications and estimate may be seen, the terms and conditions under which proposals will be received, the time and place where the same will be opened, and such other matters as the commission may deem advisable to include therein. Such advertisement shall be published at least once in each week for two successive weeks in a newspaper published at the county seat of the county in which such highway or section thereof is to be constructed or improved, and in such other newspapers as the commission may designate.

2. *Proposals.*—Each proposal shall specify the gross sum for which the work will be performed and shall also include the amount to be charged for each item specified in the estimate. The commission may prescribe and furnish forms for the submission of such proposals and may prescribe the manner of submitting the same which shall not be inconsistent herewith. The proposals when opened shall be subject at all reasonable times to public inspection, and at the time of opening shall be publicly read, and conspicuously posted in such a manner as to indicate the several items of the proposal.

3. *Award of contracts.*—The contract for the construction or improvement of such highway or section thereof shall be awarded to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate made for the construction or improvement of such highway or section thereof in accordance with such plans and specifications. The lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work will be performed, including all the items specified in the estimate therefor.

4. *Estimates may be amended.*—If no proposal otherwise acceptable is made within the estimate accompanying the plans and specifications, the commission may cause the estimate to be amended. If the highway to be constructed or improved is a county highway the commission shall certify the amended estimate to the board of supervisors and the board shall take action thereon

as in a case where plans, specifications and estimates are originally submitted to a board of supervisors. Upon the amendment of such estimate, and its approval by the board of supervisors in case of a county highway, the commission may proceed anew to obtain proposals and award the contract as provided in this section.

5. *Rejection of proposals.*—The commission may reject any or all proposals and may advertise for new proposals as above provided, if, in their opinion, the best interests of the state will thereby be promoted.

6. *Form of contract.*—The commission shall prescribe the form of contract and may include therein such matters as they may deem advantageous to the state. Such forms shall be uniform so far as may be.

7. *Bond of contractor.*—Each contractor, before entering into a contract for such construction or improvement, shall execute a bond in the form prescribed by the commission, with sufficient sureties, to be approved by the commission, conditioned that he will perform the work in accordance with the terms of the contract, and with the plans and specifications, and that he will commence and complete the work within the time prescribed in the contract. Such bond shall also provide against any direct or indirect damages that shall be suffered or claimed on account of such construction or improvement during the time thereof, and until the highway is accepted.

By an opinion of the Attorney-General, rendered January 17, 1913, it was held that under this section the liability of a contractor was limited to direct or indirect damages caused by improvement or construction during the time thereof, and until accepted. Under this provision it cannot be assumed that the contractor is liable for the condition of the right of way that exists for which he is in no way responsible and at a point where he has done nothing in the way of changing a previously existing condition, provided he has not unnecessarily delayed commencing the performance of his contract and assuming the possession of the right of way or any part thereof for the purpose of performing his contract.

8. *Payments on contract.*—The contract may provide for partial payments to an amount not exceeding ninety per centum of the value of the work done, which shall be paid in the manner provided by this article when certified to by the commission. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted.

In an opinion of the Attorney-General, rendered January 4, 1913, it was held that it is improper and illegal for a State officer to pay a portion of the reserved percentage to a contractor prior to the completion of a contract

in the absence of a sufficient consideration by way of some additional burden assumed by the contractor in consideration of such payment in advance of the time when it becomes due under the terms of the contract.

The Attorney-General in an opinion rendered March 21, 1912, held that the Commission is in no position to determine the validity or priority of assignments or liens, and no money should be paid upon contracts against which liens or assignments have been filed until the record is cleared of conflicting claims.

*9. Contingencies.*—All contingencies arising during the prosecution of the work shall be provided for to the satisfaction of the commission and as may be agreed upon in the original or by a supplemental contract executed by the commission; the amount to be expended shall not exceed the original estimate, unless such estimate shall have been duly amended by the commission and, in the case of a county highway, submitted to the board of supervisors for its approval. If a supplemental contract be executed by the commission for the performance of work or furnishing of material not provided for in the original contract, the amount to be charged thereunder for any such work or material shall not exceed the rate for which similar work or material was agreed to be performed or furnished under the original bid upon which the contract was awarded. Such supplemental contract shall not be binding unless it be approved by the commission in case of a state highway and in case of a county highway, by the chairman of the board of supervisors and the district or county superintendent.

By an opinion of the Attorney-General under date of May 15, 1909, it was held that supplemental contracts for the construction of any portion of county highways must be submitted to the board of supervisors of the county and that such contracts are not binding unless approved by the chairman of the board.

By an opinion of the Attorney-General under date of December 21, 1909, it was held that a supplemental contract is not binding except that it be approved in the case of a county highway by the chairman of the board of supervisors and the district or county superintendent. Should such change involve an increased cost beyond that of the original estimate the same must be approved by the board of supervisors after the amendment of the estimate.

*Rejection of bids by the State Engineer for construction or improvement of the highways.* Rept. of Atty.-Genl. (1908), 271.

The mere announcement by the Highway Commission that a bid will be awarded to a certain person does not make a contract and said person cannot hold the State for damages on account thereof. Rept. of Atty.-Genl., May 10, 1910.

The bond of a contractor should not be released where work upon his contract has been suspended because of weather conditions, although ten per cent. of the contract price has been reserved by the State and the amount of unperformed work will not exceed the ten per cent. reserved. Rept. of Atty.-Genl., Dec. 11, 1909.

By an opinion of the Attorney-General, under date of December 23, 1912, it was held:

"The Highway Commission has the power to cancel an uncompleted contract for the improvement of a highway if the work is not being done in full accord with the terms of the improvement and specifications. After a contract for the improvement of a highway has been completed and the highway accepted, it shall be maintained under the Highway Law providing for maintenance."

By an opinion of the Attorney-General under date of January 17, 1913, it was held:

"A contractor is liable for damages caused by the improvement and repairs to a highway under contract until accepted, but not for defects not caused by his own neglect in that portion of the right of way covered by his contract on which he has done no work or of which he has not assumed possession."

**§ 131. Award of contracts to board of supervisors or town board.**—A board of supervisors of a county, or a town board of a town, in which any portion of a state or county highway is situated, may present proposals and be awarded a contract for the construction or improvement of such highway, as provided in this article, for and on behalf of such county or town. If such contract be awarded to a board of supervisors or a town board such board shall, by resolution, designate some suitable person or persons to carry into effect, on behalf of the town, such contract, and transact all business in respect thereto as may be necessary. A member of the board of supervisors or town board at the time such contract was awarded or such designation was made, or a person who is a partner of, or a stockholder in the same corporation as that of such member, shall not be so designated. A member of the board of supervisors or town board at the time such designation was made, or a firm, corporation or association of which he is a member or has an interest, shall not be directly or indirectly interested in any such contract nor shall such member, or such firm, corporation or association furnish materials or perform labor or services, either directly or indirectly, under or in connection with the performance of any of the work required in accordance with such contract, nor shall such member, firm or corporation or association, be paid for materials furnished or services rendered in respect to such contract. The clerk of the board of supervisors

or the town clerk shall transmit a certified copy of the resolution designating the person or persons to carry into effect such contract to the commission prior to the awarding of a contract to the board of supervisors or town board. The person or persons so designated shall, before the contract is executed, give an undertaking to the county or town, with sureties to be approved by the commission and the board of supervisors or town board, for an amount equal to the amount of the bid presented by the county or town. Such undertaking shall be conditioned on the faithful performance of their duties in respect to such contract and for the proper accounting, safe-keeping and lawful disbursement of all moneys that may come into their hands thereunder. Such undertaking shall be filed in the office of the county or town clerk and a copy thereof shall be transmitted to the commission. The person or persons so designated shall thereupon be competent to receive all moneys payable under such contract under the provisions of this article, and they shall account therefor to the county or town. The board of supervisors or town board, after such contract is awarded, shall designate, by resolution, a banking corporation or a trust company wherein the moneys received under such contract shall be deposited. Such bank or trust company shall, upon the request of the board of supervisors or town board, make a statement of the money so deposited. The commission shall, by rules and regulations, prescribe the manner in which the moneys received under such contract shall be expended and the forms of accounts to be kept by the person or persons designated as above provided; and where convict labor is used, as hereinafter provided, an account shall be kept of the items incurred daily for maintenance of convicts and compensation of other laborers, if any. Reports may be required by the commission from time to time from such person or persons.

When a contract is entered into under the provisions of this section, the board undertaking thereby to construct or improve a highway or section thereof, may, by resolution, direct the person or persons designated for carrying out the contract to apply to the superintendent of state prisons for convict labor, in the construction of such highway or section thereof. The resolution shall specify the maximum number of convicts to be applied for, for such work. Such designated person or persons shall make request, in writing, to the superintendent of state prisons for convict labor, in conformity to the provisions of such resolution, such

request to be accompanied with a copy of such resolution. A copy of such resolution and of such request shall also be filed with the commission. The superintendent may detail for labor, pursuant to such resolution and request, such number of convicts as may be available therefor, not exceeding the number applied for. Such convicts shall be in the immediate charge and custody of the officers and guards detailed by the superintendent of state prisons, and at all times subject to the control of such superintendent, except that the work to be done shall be directed by the engineers and foremen of the state highway department. The expense of maintenance of such convicts shall be paid by the county or town entering into such contract from funds due thereon, to such municipality. A county or town may purchase machinery and tools for the construction of a highway or section thereof, under any such contract, out of moneys to be paid thereon, within the estimates for such items contained in the proposals at the time of the letting of the contract, but such machinery and tools shall be the property of the state, and after the completion of the work shall be subject to disposal or to any lawful use by the commission. Moneys realized from selling or renting any such used machinery or tools shall be paid into the state treasury to the credit of the highway fund. Any such used machinery or tools may be loaned by the commission, if requested, for construction of a highway or section thereof, by a county or town, by contract under this section, to be kept in repair and operated at the expense of the county or town with moneys payable under the contract.

If a county or town shall construct a highway or section thereof, by contract as above provided, for a lesser sum than the contract price, as the same shall appear from the accounts and reports herein provided for, the county or town, as the case may be, shall be paid only the amount of the actual cost of such construction, paid or incurred, and the surplus shall remain in the state treasury and continue available for any state or county highway construction for which the same may have been or shall be appropriated.

Amended by L. 1914, ch. 60.

## PRISON LAW.

**§ 170. Employment of convicts on public highways.**—The superintendent of state prisons may employ or cause to be employed the convicts confined in the state prisons in the repair of state and county highways at any place within the state upon request of the state commission of highways, the construction or improvement of state or county highways constructed or improved by any board of supervisors or town board under a contract with such commission of highways, upon request as provided in section one hundred and thirty-one of the highway law, and also in the improvement or repair of any other public highway. The expense of maintenance of such convicts while employed in repairing a state or county highway shall be borne by the state and paid by the state commission of highways, in the same manner as other expenses in repairing such highways.

The agent and warden of each prison may make such rules as he may deem necessary for the proper care, custody and control of such prisoners while so employed, subject to the approval of the superintendent of state prisons.

The agent and warden of each prison may designate, subject to the approval of the superintendent of state prisons, the highways and portions thereof upon which such labor shall be employed; and such portions so designated and approved, except portions of a state or county highway, shall be under his control during the time of such construction, improvements or repairs are in progress, and the state highway commission shall fix the grade and width of the roadway of any such highway, and direct the manner in which the work shall be done.

A state or county highway herein referred to is a state or county highway as defined in the highway law.

The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment, except employment on a state or county highway.

Amended by L. 1914, ch. 60.

**§ 132. Responsibility of commissioner of highways for the performance of contracts for construction or improvement of state and county highways; suspension of work under contract; completion by commissioner of highways.** The performance of every contract for the construction or improvement of a state or county highway shall be under the supervision and control of the commissioner of highways, and it shall be his duty to see that every such contract is performed in accordance with the provisions of the contract and with the plans and specifications forming a part

thereof. For such purpose, the commissioner of highways, shall have the direction and control of the deputies, secretary, division engineers, officers, clerks and employees of the commission. If the commissioner of highways shall determine that the work upon any contract for the construction or improvement of a state or county highway is not being performed according to the contract or for the best interests of the state, he may suspend or stop the work under the contract while it is in progress, and the commissioner of highways shall thereupon complete the work in such manner as will accord with the contract specifications, and be for the best interests of the state, or he may cancel the contract and readvertise and relet as provided in section one hundred and thirty and any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the contractor failing to perform the work. Every contract for the construction or improvement of a state or county highway shall reserve to the commission the right to suspend or cancel the contract as above provided, and to complete the work thereunder or readvertise and relet as the commission may determine.

Amended by L. 1913, ch. 517.

See opinion of Attorney-General dated September 20, 1912.

See opinion of Attorney-General dated December 30, 1912.

**§ 133. Acceptance of state highway when completed.**— Upon the completion of a state highway or section thereof constructed or improved under a contract let as provided in this article, the division engineer together with the county or district superintendent shall inspect the same and if it be completed as provided in the contract, they shall thereupon report to the state superintendent of highways and if he approves he shall report to the commission, who shall, if it approve, notify the contractor of that fact and the highway or section thereof so constructed or improved shall be deemed to have been accepted by the state.

Amended by L. 1911, ch. 646.

**§ 134. Acceptance of county highway.**— Upon the completion of a county highway or section thereof, constructed or improved under a contract let as provided in this article, in accordance with the terms and provisions of such contract and with the plans and specifications forming a part thereof, it shall be the duty of the state superintendent of highways to so certify to the commission,

and if the commission shall approve, the commission shall inform the district or county superintendent and the board of supervisors of the county in which such highway or section thereof is located in writing, that it will accept the work on behalf of the state and county within twenty days from the date of such notice, unless protest shall be filed with him in writing by the district or county superintendent or by the chairman of the board of supervisors. In case a protest is filed the commission shall hear the same and if it is sustained it shall delay the acceptance of the highway or section thereof until it be properly completed. Upon the proper completion of such highway or section thereof and after filing the notice above given it shall be deemed to have been accepted by the board of supervisors of such county and thereafter it shall be maintained as provided in this chapter.

Amended by L. 1911, ch. 646.

By an opinion of the Attorney-General, under date of December 28, 1911, it was held:

"A resolution of the board of supervisors waiving the twenty day period prescribed by section 134 of the Highway Law after receiving notice of the completion of the work on a county highway is not alone sufficient to warrant the immediate acceptance of the work and payment of the contract price by the State Highway Commission."

By an opinion of the Attorney-General, under date of November 12, 1912, it was held that under section 134 of the Highway Law it is entirely within the power of the Commission to accept a section of a county highway that has been completed and to pay for the portion completed.

**§ 135. Entry upon adjacent lands for drainage purposes.**—Lands adjacent to a state or county highway may be entered upon and occupied for the purpose of opening or constructing a drain or ditch so as to properly drain such highway:

1. By a contractor, or any of his agents or employees, when directed by the commission, during the construction or improvement of such highway.

2. By the commission or its duly authorized officers, agents or employees, at any time, for the purpose of making surveys for such drain or ditch.

3. By the commission, or its duly authorized officers, agents or employees, or by a county, district or town superintendent, when directed by the commission, after the completion and acceptance of the highway for the purpose of opening, constructing or maintaining ditches or drains upon such lands, necessary for the proper maintenance of such highway.

**§ 136. Damages for entry.**—The commission may agree with the owner of lands entered upon and occupied as provided in the preceding section for the payment of damages caused by such entry, or if unable to so agree the right to enter and occupy such lands may be acquired and the damages therefor shall be ascertained as provided in the condemnation law. Such damages shall, in the case of a state highway, be paid out of moneys available for the construction or improvement of such highway, and in the case of a county highway shall be a county charge and paid in the same manner as other county charges.

By an opinion of the Attorney-General under date of April 9, 1909, it was held that in the majority of cases condemnation proceedings should be instituted previous to entry in case of failure to agree upon damages with the owner. The opinion says in part: "While I am inclined to the opinion from the language above used (section 136) and the heading of this section that the Commission has the power to enter upon such lands before instituting condemnation proceedings, yet the safer course would be, in view of the fact that the language is not entirely clear, to start condemnation proceedings first in case a reasonable agreement cannot be made with the owner of the land. These proceedings, under the code, allow an entry to be made, under certain conditions, very shortly after the commencement of the proceedings and I therefore advise that unless an emergency exists which would endanger the safety of the highway, this course is the safer one to pursue."

**§ 137. State and county highways in villages and cities of the second and third classes.** A state or county highway may be constructed through a city of the second or third class or a village in the same manner as outside thereof, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. If it is desired to construct or improve any portion of a state or county highway within such village or city of the second or third class at a width greater than that provided for in the plans and specifications therefor, or if a modification of the plans and specifications is desired by which the cost thereof is increased, the board of trustees of such village or common council of such city shall petition the commission by resolution, to so modify such plans and specifications as to provide for such construction. The commission shall thereupon cause the plans, specifications and estimate for such highway to be modified so as to provide for

such additional construction, and shall provide therefor in the contract. Upon the completion of such state or county highway within the village or city of the second or third class in accordance with such modified plans and specifications the commission shall notify the board of trustees or common council, as the case may be, as provided in the case of a county highway. Such board or common council may file a written protest against the acceptance of such work with the commission who shall examine in respect thereto, and if it is sustained the commission shall delay the acceptance of the highway within the village or city until it be properly completed. Upon the proper completion thereof and the notification as above provided, the commission shall certify to the board of trustees or common council the cost of such additional construction, and such board or common council shall pay the same out of moneys raised by tax or from the issue and sale of bonds as provided in the village law, if in a village, or by the general or special act governing bond issues and taxation in any such city if in a city of the second or third class. The provisions of the general village law, special village or city charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as may be, to such additional construction and the assessment and payment of the cost thereof, except that the provisions of any general or local act affecting the pavement or improvement of streets or avenues in any city or village and requiring the owners, or any of the owners, of the frontage on a street to consent to the improvement or pavement thereof, or requiring a hearing to be given to the persons who, or whose premises, are subject to assessment, upon the question of doing such paving or making such improvement shall not apply to the portion of the improvement or pavement of a state or county highway the expense for which is required to be paid by the city or village to the state.

Amended by L. 1913, ch. 319.

The Attorney-General in an opinion rendered July 9, 1913, held that the method of issue and sale of bonds by a village to pay for the additional cost of paving a street in the village is controlled by the Village Law, and that a special charter of the village is superseded by chapter 319 of the Laws of 1913, which amended section 137 of the Highway Law in so far as is concerned the method to be followed by the village in the issue and sale of bonds to pay the additional cost of the widening.

By an opinion of the Attorney-General under date of May 5, 1911, it was held that no advertising for bids should be done until the village has decided what kind of pavement it wants and the specifications therefor are prepared and finally adopted, and that it is improper to ask for proposals or bids in the alternative on different classes of construction, one of which must always of necessity be more expensive than the other. It is not fair to the bidders, nor contemplated by the law, that the final adoption of plans and specifications should be delayed until after the bids are all in and opened and then to choose between different classes of construction.

By an opinion of the Attorney-General dated March 29, 1913, it was held that under this section where the highway is to be improved in a city of the second or third class or a village, that as to increased width, it is mandatory upon the Commission to provide therefor, and that it is also mandatory upon the Commission to change the form of construction provided the changed form is the proper construction for the locality and the village or city agrees to pay the increased cost. The Highway Commission cannot be compelled to so modify a proper form of construction through a city or village as to provide for construction that would not be proper for the locality.

**§ 138. Connecting highways in villages and cities of the second and third classes.**—The board of trustees of a village or the common council of a city of the second or third class may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village or a city of the second or third class, which have been paved or improved, with county highways which have been heretofore built under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated, with a written statement of their reason for providing for such construction or improvement. A copy of such statement shall be filed in the office of the county clerk of such county. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution as in other cases, and such payment shall be made in the same manner. A certified copy of such resolution shall be filed in the office of the commission. The construction or improve-

ment of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will be increased, the board of trustees of the village or the common council of the city of the second or third class shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section.

Amended by L. 1912, ch. 88.

**§ 138-a. State and county highways of additional width and increased cost at expense of town.**—Whenever the commission shall have determined upon the construction or improvement of a state highway or section thereof, or shall have approved a resolution adopted by the board of supervisors in any county requesting the construction or improvement of a county highway, or section thereof, and shall have had prepared the preliminary maps, plans and specifications, the commission shall cause notice thereof and of the proposed width and kind of construction of such road to be given the town board of every town into or through which any such highway passes. If it is desired to construct or improve a portion of a state or county highway within any such town at a greater width or in a manner involving greater cost, or both, than that provided in the plans and specifications therefor, the town board may petition the commission for an estimate of the additional cost of constructing or improving the same to a width or in a manner, or both, specified in such petition. The commission shall as soon as practicable make an estimate of such additional cost and send the same to the town board. The town board may thereupon determine, by a resolution duly adopted by a vote of a majority of all the members of such board, that such portion of highway shall be constructed or improved to the additional width or in the manner, or both, specified in its petition, at the expense of the town. If the town board deems that the additional cost as estimated by the commission should be raised by the issue and sale of town bonds, in an amount not exceeding the amount specified in such proposition, at an annual or special town meeting, and if

such proposition is adopted the bonds of the town may be issued and sold in the manner prescribed in section one hundred and forty-two of this chapter. Upon the adoption of a resolution of the town board to construct or improve such highway to an additional width, or in a manner involving increased cost as aforesaid, or both, without the issue and sale of town bonds, or upon the adoption of a proposition for such issue and sale at a town meeting, the town board shall notify the commission of such action and the commission shall thereupon cause the plans, specifications and estimate for such highway to be modified so as to provide for such additional construction in the contract. Upon the proper completion thereof, the commission shall certify to the town board of any such town the cost of such additional construction and the town board shall pay the same amount of moneys raised by tax, or from the issue and sale of bonds, as above provided.

Amended by L. 1911, ch. 375.

By an opinion of the Attorney-General rendered March 28, 1912, it was held that "The supervisor as the custodian of the town money under section 98 of the Town Law should properly handle money raised by taxes by the town for the purpose of paying the added cost of increased width or more expensive material in constructing an improved highway. The amount received from sales of bonds should also be paid to the supervisor. The general rule of the Town Law as to the power of supervisors becomes applicable."

**§ 139. Resolution to provide for raising money.** The resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof shall appropriate and make immediately available to the requisition of the commission an amount sufficient to pay the share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located.

Amended by L. 1912, ch. 83.

**§ 140. Modifying method of payment.**—If a resolution has been heretofore adopted by a board of supervisors requesting the state to pay the entire cost of the construction or improvement of a county highway in the first instance and that the state charge the county and town or towns annually with their share of the interest and sinking fund, as provided in chapter four hundred and sixty-nine of the laws of nineteen hundred and six, and the acts amendatory thereof, such board of supervisors may adopt a resolution rescinding such prior resolution and appropriating and

making immediately available an amount sufficient to pay the share of the cost of the construction or improvement of such highway. The clerk of the board of supervisors shall transmit certified copies of such resolution to the commission and the state comptroller. If such prior resolution shall not be so rescinded it shall have the same force and effect which it had prior to the amendment of this section. The adoption of a resolution modifying the method of payment of the share of the county and town or towns shall not affect or change the date of the filing of the original resolution providing for the construction or improvement of such highway nor alter in any way the order of construction determined by the date of the filing of the original resolution.

Amended by L. 1910, ch. 247.

**§ 141. Division of cost of county highways; payments by county treasurer.** Whenever the construction or improvement of a county highway or section thereof under a contract shall be completed and the final payment therefor shall have been made the commission shall prepare a statement of the cost of such construction or improvement, including engineering expenses, inspection and all charges and expenses properly chargeable thereto, showing in detail the date of each payment, and the purpose and amount of such payment. Such payments shall be grouped as far as practicable by dates and the total thus obtained shall be deemed the cost of such construction or improvement, and a certified copy of said statement shall be filed by the commission in the office of the comptroller. If a county highway or section thereof so constructed or improved shall be situate in two or more counties, the commission shall apportion such expense to such counties according to the cost of such construction or improvement in each of such counties. Such statement when audited and approved by the comptroller shall be filed in his office and shall be final, and a duplicate thereof shall be filed with the county treasurer of each county wherein the highway or section thereof has been improved. If the board of supervisors of any county shall have heretofore provided funds to pay two per centum of the cost of such county highway as thus determined, for each one thousand dollars of assessed valuation of real and personal property liable to taxation in said county for each mile of public highway within such county to be ascertained and determined by dividing the total assessed valuation of taxable property in said county as equalized for state purposes by the total mileage of highways in said county, exclusive of the streets

and highways within any incorporated city or village in said county, but not exceeding thirty-five per centum of the cost for the county as shown by such statement, it shall be the duty of the county treasurer to pay the amount thereof upon the requisition of the commission and thereafter the county shall be deemed to be fully discharged of its obligation to the state on account of the construction or improvement of such county highway, except the obligation to pay their proportionate amount of the state tax for the state's share of the cost of construction. At least ten days' notice shall be given by the commission to the county treasurer prior to the making of such a requisition. A copy of each contract providing for the construction or improvement of a county highway, and the plans and specifications therefor, together with copies of certificates showing the progress of the work, upon which requisitions are drawn, shall be filed with the county treasurer. The mileage of highways to be used in determining the amounts to be charged to a county under this section shall be the tables of mileage formerly prepared by the state engineer until the tables as provided in this chapter are filed.

Amended by L. 1912, ch. 83.

The Attorney-General, in an opinion rendered April 25, 1912, held that "The State Department of Highways should prosecute and complete the construction and improvement of county highways, plans for which had been approved and appropriations for which had been made prior to April 2, 1912, in accordance with the provisions contained in section 141 of the Highway Law as it existed previous to its amendment by chapter 83, Laws of 1912.

**§ 142. County or town may borrow money.** Whenever the board of supervisors shall have, by resolution, appropriated and made immediately available to the requisition of the commission an amount sufficient to pay its share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located, such amount so appropriated shall be a county charge and shall be paid by the county treasurer of the county in which such highway or section thereof is located, upon the requisition of the commission. If there is not sufficient funds in the county treasury to pay such share of the county of the cost of construction of such improvement so appropriated and made available, the county treasurer is authorized to borrow a sufficient amount to pay such share in anticipation of taxes to be collected therefor, or the issuance of bonds as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest. The board of supervisors may, by resolution, authorize the issu-

ance and sale of bonds of the county to an amount not exceeding the share of the county as apportioned by the commission, or if such apportionment has not been made, to an amount not exceeding thirty-five per centum of the estimated cost of the construction or improvement of such county highway as shown by the estimate approved by the board of supervisors pursuant to section one hundred and twenty-eight of this chapter, and apply the proceeds of such bonds to the payment of the share of the cost of construction of such highway to be borne by the county, appropriated and made immediately available as aforesaid or to the payment and redemption of any certificates of indebtedness issued as above provided. Said bonds shall be payable not more than thirty years from their date. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share of the cost of such improvement apportioned to the county which has not been provided for by the issuance of county bonds as a county charge. Upon the petition of the town board of any town, the board of supervisors of the county may, by resolution, authorize the town to borrow a sufficient sum to pay the share of the cost of the construction or improvement of a county highway, which is to be borne by the town as apportioned by the commission and to issue and sell town bonds therefor. Such bonds shall be payable not more than thirty years from their date, to be sold by the supervisor for not less than par, and the proceeds thereof shall be paid into the county treasury to be applied in payment of the share of such cost which is to be borne by such town and the redemption of any bonds or certificates of indebtedness issued by the county to pay such share. The board of supervisors shall, from time to time, impose upon the taxable property of the town a tax sufficient to pay the principal and interest of such bonds as the same shall become due. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share or shares of the town or towns which has not been provided for by the issuance of town bonds as a town charge.

Amended by L. 1913, ch. 623.

By an opinion of the Attorney-General rendered March 11, 1909, it was held that this section gives the county treasurer authority to borrow temporarily in anticipation of taxes and to pledge the faith and credit of the county for the payments of the amount, but the right of the board to issue bonds for such highway purposes is extremely doubtful.

§ 142-a. Where a street surface railroad shall be laid in any street, highway or public place in any village, or in any city of

the second or third classes, which it was heretofore or shall hereafter be determined to pave or improve as provided in this chapter, the proposals and contract for such improvement shall include the improvement of the space between the tracks of such street surface railroad, the rails of such tracks and two feet in width outside of such tracks, and the work of improvement in such space shall be done at the same time and under the same supervision as the work of improvement of the remainder of such street, highway or public place. The commission may prescribe the materials to be used in paving or improving such street, highway or public place within the railroad space above described, and upon the proper completion of the work, the commission shall certify to the board of trustees of such village, or the common council of cities of the second or third classes, as the case may be, the cost of the pavement or improvement of such street, highway or public place within such railroad space, and the entire expense of the pavement \*of improvement within such railroad space whether heretofore or hereafter made or ordered, shall be assessed and levied upon the property of the company owning or operating such railroad, and shall be collected in the same manner as other expenses for local improvements are assessed, levied and collected in such village or city; and an action may also be maintained by the municipality against the company in any court of record for the collection of such expense and assessment. This section shall not apply to such paving or improvements in villages in counties adjoining cities of the first class.

Added by L. 1913, ch. 177.

§ 143. **Apportionment and payment of expense of constructing county highway through or into cities of the second and third classes.** If a county highway be constructed, under the provisions of this chapter, through or within a city of the second or third class, the board of supervisors of the county in which the city is situated shall, by resolution, apportion the cost thereof between the county and city as follows: Fifteen per centum of the portion of such highway within a city shall be borne by the city and thirty-five per centum thereof by the county. The share to be borne by the county shall be paid or provided for in the manner required by this chapter in the case of an apportionment of such cost between the county and a town. The share to be borne by the city shall be paid by the imposition of a tax therein for

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\* So in original.

the full amount thereof or, in case of a city of the second class, if the common council and the board of estimate and apportionment shall so determine, then by the issuance and sale of city bonds as provided in the second class cities law, and in the case of a city of the third class, if the common council or board of aldermen thereof so determine, then by the issuance and sale of city bonds, to be payable in not more than thirty years from their date, bearing interest at not to exceed the legal rate, and to be sold for not less than par; or, such common council or board of aldermen may cause a portion of the city's share to be raised by tax at the time of the next ensuing annual city tax levy and the balance to be raised by the issuance and sale of bonds as herein above provided.

Amended by L. 1912, ch. 88.

**§ 144. Payment of cost of state highway.**—The entire expense of the construction or improvement of a state highway shall be paid by the state treasurer upon the warrant of the comptroller issued upon the requisition of the commission out of any specific appropriation made available for the construction or improvement of state highways.

**§ 145. Abolition of railroad grade crossings.**—The commission shall provide for and cause the abolition of railroad grade crossings on a state or county highway whenever practicable, in the manner provided by the railroad law. The portion of the cost of abolishing such grade crossings, which is payable under the railroad law by the state and town or village, shall be paid out of the funds available for the construction or improvement of such state or county highway as provided in this article.

The rights of a railroad company are taken and held subject always to the right of the proper public authorities to improve the highway as the public interest requires; also subject to the liability of being required to change its location, grade, etc., to conform to the requirements of such public improvement of the surface of the highway, at its own expense, without recourse in the way of damages against those lawfully engaged in improving the highway for any injury which may be done to the railroad property, when no reckless, wanton or negligent act on the part of those improving the highway caused the damage. Such changes and consequent injury to the plaintiff's property cannot be deemed the taking of private property for a public use. *M. F. C. & H. P. R. Co. v. Spuyten Duyvil Co.*, 65 Misc. 367 (1909), 121 N. Y. Supp. 656.

#### RAILROAD LAW.

**§ 89. New railroads across streets.**—All steam surface railroads built after the first day of July, eighteen hundred and ninety-seven, except additional

**switches and sidings**, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do. Whenever application is made to the public service commission under section nine of this chapter there shall be filed with the commission a map showing the streets, avenues, highways and roads proposed to be crossed by the new construction, and the commission shall determine whether such crossings shall be under or over the proposed railroad, except where the commission shall determine such method of crossing to be impracticable. Whenever an application is made under this section to determine the manner of crossing, the commission shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over the streets, avenues, highways or roads proposed to be crossed by the new railroad. The commission shall also give public notice of such hearing in at least two newspapers, published in the locality affected by the application, and all persons owning land in the vicinity of the proposed crossing shall have the right to be heard. Upon such a notice and after a hearing, the public service commission may determine that alterations or changes may be made in any existing highway, at or in the vicinity of a proposed crossing for the purpose of avoiding a crossing at grade.

The decision of the commission rendered in any proceedings under this section shall be communicated, within twenty days after final hearing, to all parties to whom notice of the hearing in said proceedings was given, or who appeared at said hearing by counsel or in person. [Amended by L. 1914, ch. 378.]

**§ 90. New streets across railroads.**—When a new street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road, or a state or county highway or county road deviating from the line of an existing highway or road, shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section ninety-one of this chapter, such street, avenue, highway or road or portion of such street, avenue, highway or road, shall pass over or under such railroad or at grade, as the public service commission shall direct. Notice of intention to lay out such street, avenue, highway, or road, or new portion of a street, avenue, highway or road, across a steam surface railroad shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue, highway or road by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. In case of the construction of a state or county highway which deviates from the line of an existing highway across a steam surface railroad, a like notice shall be given to such railroad company by the state commission of highways at least fifteen days prior to the adoption of the maps, plans and specifications for such state or county highway by such commission. Such notice shall designate the time when and place where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road, or before the state commission of highways in case of a state or county highway, on the question of the location of such highway. If the municipal corporation determines such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be necessary,

or if the state commission of highways determines that such state or county highway which deviates from the line of an existing highway shall be constructed across such railroad at the place indicated in the maps, plans and specifications therefor, such municipal corporation or commission of highways shall then apply to the public service commission before any further proceedings are taken, to determine whether such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pass over or under such railroad or at grade. The public service commission shall thereupon appoint a time and place for hearing such application, and shall give such notice thereof as it shall judge reasonable, not however less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, to the state commission of highways, or in the case of a state or county highway which deviates from the line of an existing highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue, highway or road to be opened, extended or constructed. The public service commission shall determine whether such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway shall be constructed over or under such railroad or at grade. If said commission shall determine that such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad above grade, then said commission shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be carried across such railroad, and the length, character and grades of the approaches thereto. If said commission shall determine that such street, avenue, highway or road shall be constructed or extended below the grade, said commission shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said commission shall determine that said street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall be constructed or extended at grade, said commission shall determine the manner and method in which the same shall be carried over said railroad at grade and what safeguards shall be maintained. The decision of the commission as to the manner and method of carrying new such street, avenue, highway or road, or new portion or additional width of a street, avenue, highway or road, or state or county highway which deviates from the line of an existing highway, across such railroad shall be final, subject however to the right of appeal hereinafter given. The decision of said commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing of such proceeding was given, or who appeared at such hearing by counsel or in person. [Amended by L. 1914, ch. 378.]

**§ 91. Petition for alteration of existing crossing.**—The mayor and common council of any city, the president and trustees of any village, the town board of any town, the board of supervisors of any county within which a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road crosses or is crossed by a steam surface railroad at

grade, below or above grade by structures heretofore constructed, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road at grade, below or above grade, may bring their petition in writing to the public service commission, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the crossing, a change in the existing structure by which such crossing is made, the closing and discontinuance of a crossing and the diversion of the travel thereon to another street, avenue, highway, road or crossing, or if not practicable to change such crossing from grade, below or above grade or to close or discontinue the same, the opening of an additional crossing for the partial diversion of travel from the grade below or above grade crossing, and praying that the same may be ordered. Where a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road in a city, village, town or county, which crosses or is crossed by a steam surface railroad at grade, below or above grade, is a part of a highway which the state commission of highways shall have determined to construct or improve as a state or county highway, as provided in article six of the highway law, such commission of highways may bring a petition containing any of the allegations above specified and praying for a like order. Upon any such petition being brought the public service commission shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as it shall judge reasonable, of not less than ten days, however, to such petitioner, the railroad company, the municipality in which such crossing is situated, and if such crossing is in whole or part in an incorporated village having not to exceed twelve hundred inhabitants, also to the supervisor or supervisors of the town or towns in which such crossing is situated; and in all cases to the owners of the lands adjoining such crossing and adjoining that part of the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road to be changed in grade or location, or the land to be opened for a new crossing, and to the state commission of highways in case of a state or county highway. The public service commission shall cause notice of said hearing to be advertised in at least two newspapers published in the locality affected by the application. Upon such notice and after a hearing the public service commission shall determine what alterations or changes, if any, shall be made. If the application be made by the state commission of highways in respect to a street, avenue, highway or road or new portion or additional width of a street, avenue, highway or road proposed to be constructed or improved as a part of a state highway, the decision shall state whether such highway shall cross such railroad above or below the grade of the highway; in case of a county highway, such decision shall state whether such highway shall cross such railroad at grade, or above or below the grade of the highway. The decision of said public service commission rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made pursuant to sections eighty-nine and ninety hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the

supreme court in the department in which such grade crossing is situated, and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court.

Amended by L. 1914, ch. 378.

**§ 93. Repair of bridges and subways at crossings.**—When a highway crosses a railroad by an overhead bridge, the framework of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality in which the same are situated; except that in the case of any overhead bridge constructed prior to the first day of July, eighteen hundred and ninety-seven, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligation shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the town superintendent of highways or other duly constituted authority, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality in which the same are situated. In case such highway is a part of a state or county highway constructed or improved as provided in article six of the highway law, the roadway over such railroad or the subway underneath the same, and the approaches thereto, shall be maintained and kept in repair under the supervision and control of the state commission of highways in the manner provided by the highway law for the maintenance and repair of state and county highways.

**§ 94. Expense of constructing new crossings.**—Whenever under the provisions of section eighty-nine of this chapter, new railroads are constructed across existing highways, the expense of crossing above or below the grade of the highway including any expense incurred in altering or changing the highway under a determination of the public service commission shall be paid entirely by the railroad corporations. Whenever under the provisions of section ninety of this chapter a new street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation having jurisdiction over such street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road shall pay the remaining one-half of the expense of making such crossing above or below grade; and whenever a change is made as to an existing crossing or structure in accordance with the provisions of section ninety-one of this chapter, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by such municipal corporation and twenty-five per centum by the state; except that whenever an existing crossing, in which a change is made under the provisions of said section ninety-one, is located wholly or partly within an incorporated village having not to exceed twelve hundred inhabitants, the portion of expense herein required to be borne by the municipal corporation shall be borne by the town or towns in which such crossing is situated. Whenever

under the provisions of sections ninety and ninety-one of this chapter a highway is constructed across an existing railroad and is a part of a state or county highway constructed or improved as provided in the highway law, one-half of the expense of making such crossing above or below grade or changing or rebuilding the existing structure by which such crossing is made, shall be paid by the railroad corporation, and the remaining one-half of such expense shall be paid by the state in the case of a state highway, and jointly by the state, county and town in the case of a county highway, in the same proportion and in the same manner as the cost of the construction or improvement of such state or county highway is paid. Whenever in carrying out the provisions of sections ninety or ninety-one of this chapter two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the public service commission. In carrying out the provisions of sections eighty-nine, ninety and ninety-one of this chapter the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision and approval of the public service commission, and in all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements shall be paid primarily by the municipal corporation having jurisdiction over the street, avenue, highway or road or new portion or additional width of such street, avenue, highway or road or, in case of a state or county highway, upon the order of the state commission of highways out of moneys available therefor. Plans and specifications of all changes proposed under sections ninety and ninety-one of this chapter, and an estimate of the expense thereof shall be submitted to the public service commission for its approval before the letting of any contract. If such changes are proposed in a highway which is to be constructed or improved as a state or county highway, such plans and specifications shall also be submitted to the state commission of highways for its approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the public service commission, and if the commission shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The commission may employ temporarily such experts and engineers as may be necessary to properly supervise any work that may be undertaken under sections eighty-nine, ninety and ninety-one of this chapter, the expense thereof to be paid by the comptroller upon the requisition and certificate of the commission, said expense to be included in the cost of the particular change in grade or in the structure above or below grade on account of which it is incurred and finally apportioned in the manner provided in this section, upon the completion of the work and its approval by the public service commission an accounting shall be had between the railroad corporation and the municipal corporation, or the state commission of highways, of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation, or the state commission of highways has expended more than its proportion of the expense of the crossing as herein provided, a settlement shall be forthwith made in accordance with the provisions of this section. All items of expenditure shall be verified under oath, and, in case of a dispute between the railroad corporation and the municipal corporation or the state

commission of highways as to the amount expended, any judge of the supreme court in the judicial district in which the municipality, or the state or county highway, is situated may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same, with interest from the date of such accounting, may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense, suit may be instituted by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation. The legislature shall annually appropriate out of any moneys not otherwise appropriated the sum of one hundred thousand dollars for the purpose of paying the state's proportion of the expense of a change in an existing grade crossing or of the structure of any existing crossing above or below grade other than that required to be paid by the state from funds appropriated for the construction of state and county highways as above provided. If in any year any less sum than one hundred thousand dollars is expended by the state for the purpose aforesaid the balance remaining unexpended shall be applied to reduce the amount appropriated by the state in the next succeeding year, except that no such deduction shall be made in case there are outstanding and unadjusted obligations on account of a change in an existing grade crossing or the structure above or below grade for a proportion of which the state is liable under the provisions of this section. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing or the structure of any existing crossing above or below grade shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the public service commission to the effect that the work has been properly performed and a statement showing the situation of the crossing or structure that has been changed, the total cost and the proportionate expense thereof, and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the public service commission may direct, subject, however, to the rights of the respective parties as they appear from the accounting to be had as hereinbefore provided for. No claim for damages to property on account of the change or abolishment of any crossing or change in structure under the provisions of this article shall be allowed unless notice of such claim is filed with the public service commission within six months after completion of the work necessary for such change or abolishment.

Amended by L. 1914, ch. 378.

**§ 95. Proceedings by public service commission for alteration of grade crossings.**—The public service commission may in the absence of any application therefor, when in its opinion public safety requires an alteration in an existing grade crossing or a change in any existing structure above or below grade, institute proceedings on its own motion for an alteration in such grade crossing or structure, upon such notice as it shall deem reasonable, of not less than ten days however, to the railroad company, the municipal corporation and the person or persons interested, and proceedings shall be conducted as provided in section ninety-one of this chapter. The changes in existing grade crossings or structures authorized or required by the commission in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before it will permit.

**§ 146. Railroads and other works and structures in and upon highways.**—No street surface or other railroad shall be constructed upon any portion of a state or county highway which has been or may be improved under the provisions of this article, nor shall any person, firm or corporation enter upon or construct any works in or upon any such highway, or construct any overhead or underground crossing thereof, or lay or maintain therein drainage, sewer or water pipes underground, except under such conditions and regulations as may be prescribed by the commissioner of highways, notwithstanding any consent or franchise granted by any town, county or district superintendent, or by the municipal authorities of any town. Any person, firm or corporation violating this section shall be liable to a fine of not less than one hundred dollars nor more than one thousand dollars for each day of such violation, to be recovered by the commissioner of highways and paid to the state treasurer to the credit of the fund for the maintenance and repair of state and county highways, and may also be removed therefrom as a trespasser by the commissioner of highways upon petition to the county court of the county or the supreme court of the state.

Amended by L. 1911, ch. 646 and L. 1913, ch. 80.

By an opinion of the Attorney-General under date of June 17, 1909, it was held that a street railway company cannot be compelled by the Highway Commission to change the grade of its tracks; the Public Service Commission has authority in questions of this character.

By an opinion of the Attorney-General under date of June 30, 1909, it was held that an electric railway has no claim for damages against the State, county or town which may be sustained by it on account of any change made by the Highway Commission in the roadbed along a trolley

line, the purpose of the commission being solely the improvement of the highway and not to oust the trolley company from its use thereof.

By an opinion of the Attorney-General February 20, 1909, it was held that the Highway Commission has the power under the provisions of this section to make rules and regulations or prescribe such conditions as it may deem wise regarding telephone and telegraph companies.

By an opinion of the Attorney-General rendered January 17, 1913, it was held that a permit provided for by this section to be issued by the Commission is not limited to the portion of a highway through an incorporated village which the State is bound to maintain, but extends to the entire width of the macadam. The granting of this permit does not supersede or make unnecessary the obtaining of the permit from the proper city, village or town authorities when such permit is required by law.

See Attorney-General's opinion January 29, 1913.

**Additional persons and corporations subject to the public service commissions law.**— Any person or any corporation who or which owns or operates a stage route or bus line wholly or partly upon and along a highway known as a state route or any road or highway constructed wholly or partly at the expense of the state or in, upon or along any highway, avenue or public place in any city of the first class having a population of seven hundred and fifty thousand or under, shall be deemed to be included within the meaning of the term "common carrier" as used in the public service commissions law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers. Wherever the portion of such route, road or highway upon which such bus line or stage route is or shall be operated shall have been constructed partly at the expense of a railroad corporation, or street railroad corporation, it shall be the duty of the state highway commission to certify to the public service commission of the proper district a statement of the total sum contributed by such railroad or street railroad corporation for the purposes of such construction, and the public service commission may, in its discretion, require such person or corporation operating a bus line or stage route to contribute to the fund for maintenance of state and county highways within the county in which such bus line or stage route is operated a sum equal to five per centum of the sum paid by such railroad or street railroad corporation for construction, as a condition for further operating such bus line or stage route.

Added by L. 1913, ch. 495. Transportation Corporations Law, § 25.

**§ 147. Where cost is assessable against abutting owners.**— If fifteen per centum of the cost of constructing or improving a highway has been or may be assessed upon abutting owners, as authorized by section ten of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, as the same existed prior to its repeal by chapter four hundred and sixty-eight of the laws of nineteen hundred and six, such highway shall be constructed or improved at the joint expense of the state, county and town as provided herein, and the portion of the cost so

assessable upon such owners, shall be paid by the town in which such highway is located, as provided in this article.

**§ 148. Acquisition of lands for right of way and other purposes.**— If a state or county highway, proposed to be constructed or improved as provided in this article, shall deviate from the line of a highway already existing, the board of supervisors of the county where such highway is located, shall acquire land for the requisite right of way prior to the actual commencement of the work of construction. The board of supervisors may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, improvement or maintenance of highways, or for spoil banks together with a right of way to such spoil banks and to any bed, pit, quarry, or other place where such gravel, stone or other material may be located.

By an opinion of the Attorney-General rendered December 15, 1909, it was held that it was clearly the intention of the Legislature that the county should furnish the road free and clear of all incumbrances, and if the road is incumbered by an easement, privilege or franchise that either obstructs or interferes with the improvement, that it is the duty of the county to relieve the road of such burden so that the improvement which the county has asked for can be carried through to completion, and there is no obligation resting upon the Commission of Highways to clear the road of such incumbrances.

By an opinion of the Attorney-General rendered March 12, 1912, it was held that it is clearly within the power of the State Commission of Highways to provide for a deviation, however long it may be, and it is the duty of the board of supervisors to provide the necessary right of way.

In a letter from the Attorney-General dated March 17, 1914, in reply to an inquiry from the Highway Department he advised that there was no provision of the Highway Law which permits the State to acquire right of way except in a grade crossing elimination and that the State could not purchase right of way even in an Indian Reservation.

Section 7, article 7 of the Constitution provides that "The lands of the State now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be forever kept as wild forest lands." The Attorney-General, in an opinion rendered June 14, 1913, held that it was clearly the intent of the framers of the constitution to preserve the lands constituting the forest preserve in their natural state and that the Commission had no authority to allow county officials to use for highway purposes stone from a ledge in the forest preserve.

The Attorney-General, in an opinion rendered December 30, 1912, held that it would be against the intent of this provision of the Constitution to lay out new highways through the forest preserve, however great the desirability thereof might be.

**§ 149. Purchase of lands.—** The board of supervisors may, by resolution, authorize its chairman, a member, or a committee to

purchase the lands to be acquired for the purposes specified in the preceding section. But the amount to be paid under this section to a single owner shall not exceed the sum of two hundred dollars, unless approved by the county judge and county treasurer, and in no case shall such amount exceed the sum of one thousand dollars. The purchase price of such lands shall be a county charge, and shall be paid in the same manner as awards are paid in cases where the proceedings are taken as herein required.

**§ 150. Petition to acquire lands.**— If the board of supervisors is unable to acquire lands by purchase as provided for in the last section, the board may present to the county court of the county or to the supreme court, at a special term thereof, to be held in the judicial department in which said county is located, a petition for the appointment of three commissioners of appraisal to ascertain and determine the compensation to be paid to the owners of the land to be acquired and to all persons interested therein. Such petition shall describe the land to be acquired with a reference to the map upon which the same is shown which shall be annexed to such petition. A copy of such petition and map shall be filed in the office of the county clerk. Such petition shall be signed and verified in the name of the board of supervisors, by the chairman or a member thereof designated for that purpose by resolution. Notice of presentation of such petition to such court shall be given by the petitioner by publishing such notice in two newspapers published in such county, once in each week for two weeks successively preceding the day of such presentation, and also by posting a copy of said notice in not less than three public places in each town in which property to be acquired is located, at least eight days preceding the day of such presentation.

Amended by L. 1911, ch. 503.

**§ 151. Commissioners to be appointed.**— Upon such presentation, such court shall, after hearing any person owning or claiming an interest in the lands to be acquired who may appear, appoint three disinterested persons as commissioners. And in case a commissioner shall at any time decline to serve, or shall die, or for any cause become disqualified or disabled from serving as such, the said court, at a similar special term, may, upon similar notice, application and hearing, and upon such notice to the land owners as the court may prescribe, appoint another person, similarly qualified, to fill the vacancy caused thereby.

**§ 152. Duties of commissioners.**— The said commissioners shall take the oath of office prescribed by the constitution, which oath shall be filed in the office of the county clerk of the county. Upon the filing of such oath the title to the lands described in the petition and map filed in the office of the county clerk shall vest in the county for the purpose of a highway forever. The commissioners shall, with all reasonable diligence, proceed to examine such highways and lands. Said commission shall cause a notice to be published in two such newspapers as aforesaid, once each week for two weeks successively next preceding the day of meeting mentioned in such notice, that at a stated time and place within such county they will meet for the purpose of hearing the parties claiming an interest in the damages to be awarded for the lands taken for such highways. Said notice shall also state the fact that a map or maps showing the land acquired has been filed in the county clerk's office. At the time and place of said meeting and at any adjournment thereof which said commissioners shall publicly make, they shall hear the proofs and allegations of all interested parties. They may adjourn the proceedings before them from time to time, issue subpoenas or administer oaths in such proceedings; and shall keep minutes of their proceedings and reduce to writing all oral evidence given before them. They shall thereafter make and sign a report in writing, in which they shall assess, allow and state the amount of damages to be sustained by the owners of the several lots, pieces or parcels of land taken for the purposes aforesaid. Such report shall contain the names of the owners of any parcel of land acquired as aforesaid, except that in case the commissioners are unable to ascertain the names of such owners, they may in place of the name of such undiscovered parties insert the words "unknown owners," in their report. The said commissioners shall file their said report, together with the minutes of their proceedings, in the office of county clerk of such county. After said report shall have been completed and filed as aforesaid, the commissioners shall, after publishing a notice in like manner as that provided in section one hundred and fifty-two, apply to the county court of the county or to the supreme court, at a special term thereof to be held in the judicial department in which said county is located, to have the said report confirmed. If no sufficient reason to the contrary shall appear, the court shall confirm said report. Otherwise it may refer the same back to the said commissioners for revision or correction;

and after such revision or correction the same proceedings shall be taken as are hereinbefore provided for, and the commissioners shall in the same manner make renewed application for the confirmation of such report, and the court shall thereupon confirm or refer back the said report, and such proceedings shall be repeated until a report shall be presented which shall be confirmed by the said court.

Amended by L. 1911, ch. 503.

**§ 153. County treasurer to pay awards.**—Within six months after the report of said commissioners shall be confirmed as aforesaid, the county treasurer of such county shall pay to the persons named therein the amounts awarded to them for damages with six per centum interest thereon from the date of the filing of the oath of the commissioners in the office of the county clerk. Such amounts with interest and the amounts paid in pursuance of this article shall be a county charge and shall be paid by the county treasurer, in case of purchase upon requisition of the chairman of the board of supervisors of said county, or by any member or committee thereof designated for that purpose by said board and in case of a petition for the acquisition of such lands, upon service of a certified copy of the order confirming such awards. In case there are unknown owners, to whom the award is made in said report, the said county treasurer shall deposit the amounts awarded to them with like interest in some trust company or bank in such manner as the said court shall in the order of confirmation direct, such amount to be paid out upon the application of said unknown owners when discovered.

Amended by L. 1911, ch. 503.

**§ 154. Costs; commissioners' fees.** In all cases of assessment of damages by commissioners appointed by the court, the costs thereof shall be a county charge in the first instance, and be paid by the county treasurer as hereinbefore provided, except when reassessment of damages shall be had on the application of the party for whom damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment, and when application shall be made by two or more persons for reassessment of damages all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action.

Each commissioner appointed by the court as provided in this article for each full day necessarily employed as such, shall be entitled to the sum of six dollars and his necessary expenses. The amount of compensation to which such commissioners are entitled shall be determined by the court in which the proceeding is pending, upon verified accounts presented by such commissioners, stating in detail the number of hours necessarily employed in the discharge of their duties; and the nature of the services rendered, upon eight days' notice to the attorney for the petitioner in the proceeding.

*Amended by L. 1912, ch. 182.*

**§ 155. Land may be sold or leased; disposition of proceeds.**—Any lands acquired by purchase or condemnation, for the purpose of obtaining gravel, stone or other materials, for the construction or maintenance of highways improved or constructed as provided in this article, or required for spoil banks, may be sold or leased by the board of supervisors of any county, when no longer needed for any of such purposes. The proceeds thereof shall be paid into the county treasury and shall be retained therein as a separate fund available for the construction or maintenance of highways improved or constructed under this article. The board of supervisors may, where it has acquired land by purchase or condemnation as a right-of-way for a state or county highway, sell, convey, grant or lease to the owner or owners of property adjoining the same, so much thereof as may be unnecessary for such highway purposes, provided the strip of land retained for such highway purposes is not less than sixty feet in width, and provided such sale, conveyance, grant or lease will give said adjoining owner or owners of land a frontage immediately in front of their respective premises upon the new highway and right-of-way when completed. The board of supervisors may make such sale, conveyance, grant or lease to such owner or owners of real property for the purpose of compensating such owner or owners for damages sustained by reason of the change of the location of such highway and in full settlement thereof.

*Amended by L. 1911, ch. 552.*

**§ 156. Application of provisions of labor law.**—The provisions of section three of the labor law, as amended by chapter five hundred and six of the laws of nineteen hundred and six, which except from the provisions of that section labor performed in the con-

struction, maintenance and repair of highways outside the limits of cities and villages, shall apply to the construction, improvement and maintenance of state and county highways as provided in this chapter.

**§ 157. Highways and bridges on Indian reservations.**—When any portion of a county highway designated for improvement or construction in a county, as provided in this article, is located on an Indian reservation, the entire cost of the improvement or construction of such portion shall be paid by the state in the same manner as the state's share of the cost of such county highway, out of any specific appropriation made available for the construction or improvement of county highways. The commission shall have exclusive supervision and control of all bridges constructed or to be constructed by the state on any Indian reservation, and may make and enforce such reasonable rules and regulations concerning their use, as it shall deem necessary.

**§ 158. Appointment and duties of reservation superintendent.** The commission may appoint a reservation superintendent for any Indian reservation in the state who shall exercise the powers and perform the duties conferred and imposed upon town superintendents, except that the written statement as provided for by section ninety of the highway law shall be filed with the commission on or before the thirty-first day of October in each year, and excepting that all orders of the Indian reservation superintendent shall be drawn upon and presented for payment as herein-after provided to the county treasurer of the county in which such Indian reservation or major portion thereof exists.

While any such reservation superintendent shall be acting in that capacity no highway within such reservation shall be laid out, altered, or discontinued, without his consent. Whenever land may be acquired without expense or is dedicated for highway purposes within any Indian reservation, the reservation superintendent in charge thereof may make an order laying out the said highway by filing and recording said order in the town clerk's office of the town in which said highway is located. He shall also file said order with the recording officer of the tribe through whose lands such highway extends.

**§ 159. Custody of moneys, et cetera.** There shall be paid by the state treasurer to the county treasurer of each county in the state containing an Indian reservation, reservations, or major portion

of an Indian reservation, an amount which shall not be less than thirty dollars per mile, based on the entire mileage of the public highways within the Indian reservation in such county. All moneys of the state available for the improvement, repair and maintenance of highways and bridges and for the purchase of machinery, tools and implements within Indian reservations shall be paid to the county treasurer of each county containing such Indian reservation or major portion thereof, who shall be the custodian thereof and accountable therefor, and it shall be expended for the repair and improvement of the public highways and bridges and for the purchase of machinery, tools and implements within such Indian reservations at such places and in such manner as may be directed by the commission, and such moneys shall be paid out by the county treasurer upon the written order of the Indian reservation superintendent in accordance with such directions. The county treasurer and the Indian reservation superintendent shall keep their accounts according to the methods and use the blanks as prescribed by the commission. All orders and records of accounts shall be filed in the office of the commission on or before the thirty-first day of October in each year and shall be preserved by the commission as Indian reservation records. The reservation superintendent shall receive a per diem or annual allowance as compensation for services and expenses in an amount to be fixed by the commission, which shall be paid by the county treasurer to the reservation superintendent upon orders of the commission. The commission shall annually cause to be inspected all of the bridges within the Indian reservations of each county and shall require a complete report of such inspection which shall show in detail the condition of the bridges inspected, the necessary work to be performed in the repair and maintenance of such bridges and the estimated cost thereof. The commission shall revise such estimates and annually report to the legislature its estimated cost for such repairs and construction for the ensuing year in detail by reservation and county. The maintenance, repair and construction of the public highways within the Indian reservation shall be under the direct supervision and control of the commission and the state superintendent of highways and they shall be responsible therefor as herein provided. There shall be annually appropriated for the construction, repair and maintenance of such highways and bridges and for the purchase and repair of machinery, tools and implements, an amount suffi-

cient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature. The comptroller upon requisition of the commission shall draw his warrant on the state treasurer in favor of the county treasurer who is the custodian of such funds as herein provided for an amount which shall not be in excess of the total amount apportioned by the commission to the Indian reservation of any county. The moneys so paid shall be deposited by said county treasurer to the credit of the fund for the maintenance, repair and construction of highways and bridges and the purchase and repair of machinery, tools and implements in the Indian reservation of said county.

Amended by L. 1913, ch. 474.

**§ 160. Maintenance of detours during construction.** The maintenance and repair of any highway or right of way designated by the commission for use as a detour, during the construction of a state or county highway, shall be under the supervision of the commission and shall be paid for out of the construction fund or the state's share of the money available for maintenance and repair of improved roads in such county. Such highway or right of way designated as a detour by the commission shall be deemed an improved highway during construction.

Amended by L. 1912, ch. 83.

In an opinion of the Attorney-General rendered May 22, 1913, it was held that section 77 of the Highway Law provides that the right of way for detours made necessary by the closing of roads under construction or repairs must be acquired by the town superintendent and the cost thereof is a town charge. Section 160 provides that the maintenance and repair of any highway or right of way shall be paid for by the Commission only in a case where such right of way was designated by the Commission as a detour. In any case, the right of way must be acquired by the town superintendent and the maintenance and repair of such a detour is a town charge unless the right of way was originally designated by the Commission as a detour, in which case the maintenance and repair shall be under the supervision of the Commission and paid for out of the construction fund or the State's share of the maintenance fund for roads in the county.

See opinion of the Attorney-General, dated December 30, 1912.

## ARTICLE VII.

### Maintenance of State and County Highways.

Section 170. Commission to provide for maintenance and repair.

171. Appropriations by state; apportionment of moneys.

172. Cost to town for maintenance of state and county highways.

173. Disbursement of maintenance funds.

174. Reports of county treasurer.
175. Compensation of town superintendents.
176. Liability of state for damages.
177. Maintenance of state and county highways in villages.
178. State to share expense of maintaining county roads.
179. Sprinkling; removal of filth and refuse.

**§ 170. Commission to provide for maintenance and repair.—**

The maintenance and repair of improved state and county highways in towns, incorporated villages and cities of the third class, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commissioner of highways and he shall be responsible therefor. Such maintenance and repair may be done in the discretion of the commissioner either directly by the department of highway or by contract awarded to the lowest responsible bidder at a public letting after due advertisement, and under such rules and regulations as the commissioner of highways may prescribe. The commissioner of highways shall also have the power to adopt such system as may seem expedient so that each section of such highways, shall be under constant observation, and be effectively and economically preserved, maintained and repaired. The commissioner of highways shall have the power to purchase materials for such maintenance and repairs, except where such work is done by contract, and contract for the delivery thereof at convenient intervals along such highways.

**Amended by L. 1912, ch. 83 and L. 1913, ch. 80.**

By an opinion of the Attorney-General rendered July 3, 1913, it was held that advertisement for maintenance contracts should be made the same as in the case of construction contracts, and that the provisions of section 130 apply as well to maintenance contracts as to contracts for construction.

In the case where a question arose as to whether this section conferred upon the Highway Commissioner authority to purchase a railroad switch, it was held by the Attorney-General in an opinion rendered December 11, 1912, that the power of the Commissioner was limited to the purchase of materials for maintenance and repairs and that a railroad switch could not be considered material in this sense, but that the Commissioner might have authority to rent such a switch for a limited time if it were necessary in order to deliver materials for maintenance or repair.

In a letter of the Attorney-General dated March 20, 1914, in answer to an inquiry from the Highway Department in regard to whether the Commission, under this section, had authority to pay demurrage on cars of material, he advised, that where it was found impossible to unload the cars within the time prescribed by the railroad, demurrage would be necessarily an incidental

part of the delivery and the Commission being empowered to purchase material and provide for its delivery, would necessarily be empowered to pay reasonable demurrage where it was found to be necessary.

By an opinion of the Attorney-General rendered December 23, 1912, it was held that the removal of an obstruction in the highway caused by snow cannot be said to be a repair or a maintenance of the highway. It is simply an act required to keep the highway open and is not caused by any defect or injury to the highway itself and cannot be classed as a maintenance or repair which the Highway Commission is bound to provide for under this section.

**§ 171. Appropriations by state; apportionment of moneys.** There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-one of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes.

Amended by L. 1912, ch. 83.

The Attorney-General, in an opinion rendered January 24, 1913, held that "material used or to be used for maintenance should be paid for from maintenance funds and no authority exists or has ever existed under the

present Highway Law to provide for the furnishing of such material under a construction contract or to pay for it out of the avails of bonds issued and sold for construction or improvement of highways, and the same should be paid if such material is purchased out of the maintenance funds."

**§ 172. Cost to town for maintenance of state and county highways.** Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits, and each city of the third class shall pay for such maintenance and repair at the rate of three cents for each square yard of surface of such improved highway maintained by the state within the incorporated limits of such city. On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county, to the board of trustees of each village and to the common council of said city a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each village or said city, in such county and the amount which each of such towns, villages and cities, is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county, the board of trustees of an incorporated village and the common council of said city shall cause the amount to be paid by each town, incorporated village and said city of the county, to be assessed, levied and collected therein in the same manner as other town, village and city charges, in the several towns, villages and cities of the third class, and such amount when collected shall be paid into the county treasury to the credit of the fund for the maintenance of state and county highways in the several towns, incorporated villages and said cities of the county.

Amended by L. 1912, ch. 83.

The Attorney-General, in an opinion rendered October 29, 1912, held that the liability of a village or city of the third class, under this section, was not limited to a highway sixteen feet in width.

In a case where the board of supervisors of a county refuses to raise any money for the maintenance of county highways within the county, it was held by the Attorney-General in an opinion rendered April 22, 1909, that the Commission can institute mandamus proceedings to compel the board to take such action.

**§ 173. Disbursement of maintenance funds.** The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town, incorporated village or city of the third class as provided by section one hundred and seventy-two shall be expended for the repair and maintenance of such highways in such town, incorporated village or said city. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a bond in an amount to be specified by the commission, and with such sureties as shall be approved by the commission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair.

Amended by L. 1912, ch. 83.

**§ 174. Reports of county treasurer.** The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns, incorporated villages and cities of the third class in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission.

Amended by L. 1912, ch. 83.

**§ 175. Compensation of town superintendents.** If a town superintendent shall be directed by the commission to perform services in respect to the maintenance and repair of improved state and county highways within his town his compensation therefor shall be paid out of the moneys set apart as provided in this

article for such maintenance and repair. Such compensation shall be fixed by the commission but shall in no case exceed the amount fixed by the town board as compensation for his services performed for the town under this chapter, and in rendering his monthly bill to the supervisor, and his annual bill to the town board, no charge shall be made against the town for an expense or per diem charge upon any date for which an audit shall have been allowed by the state commission. And said state commission shall make proper rules and regulations to carry into effect this provision and to furnish to the town board prior to the annual audit day due information as to the dates, compensation and expenses allowed by them to said town superintendent from the state repair fund.

Amended by L. 1912, ch. 83.

**§ 176. Liability of state for damages.** The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are maintained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be construed to impose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages and cities of the third class the state shall maintain a roadway of equal width to that lying immediately outside of said incorporated limits, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damages shall occur as a result of the defective condition of the portion of improved highway as above described.

Amended by L. 1912, ch. 83.

By an opinion of the Attorney-General rendered May 13, 1913, it was held that on a highway maintained under the patrol system, where the State may be liable for damages, it is a reasonable regulation to require of the applicant for the permit the giving of a bond or other security to protect the State from any liability by reason of any structure erected by the applicant in or upon the highway and that the Commissioner is at liberty to prescribe the same as a condition of the permit.

See Attorney-General's opinion January 17, 1913.

Section 177 repealed by L. 1912, ch. 83.

**§ 178. State to share expense of maintaining county roads.—** Whenever any county has constructed, maintained or improved, or shall hereafter construct, maintain or improve, under a general or special law, a county road or roads, as defined in subdivision three of section three, without expense to the state, the state shall be liable to annually contribute toward the expense of maintaining such road or roads fifty per centum of the amount appropriated by such county for the maintenance of such road or roads during the preceding year, unless provision be otherwise made for such maintenance as provided in this section. The clerk of the board of supervisors of a county entitled to a contribution from the state toward the maintenance of its roads under this section shall annually, on or before the first day of January, transmit to the state comptroller a statement certified by him and signed and verified by the chairman of such board, stating the amount appropriated by the board of supervisors of such county for the maintenance of such county road or roads during the preceding year. The comptroller shall draw his warrant upon the state treasurer in favor of the treasurer of such county, for an amount equal to fifty per centum of the amount so appropriated. Such money shall be applicable to the repair and permanent improvement of such county road or roads, and shall be expended in the same manner as money appropriated by the county for such purpose. The sum paid by the state to any county by virtue of this section shall not exceed, in any one year, one-tenth of one per centum of the taxable property of such county. The commission may at any time inspect such county roads and if they determine that any of such roads are of sufficient importance and are properly constructed, they shall make an order directing that such county roads become a part of the system of state or county highways in such county, and thereafter such roads shall be maintained as state or county highways in the manner provided in this article, and the state shall cease to contribute for the maintenance thereof as provided in this section. Such order shall be served upon the chairman of the board of supervisors and a certified copy thereof shall be filed in the office of the county clerk and one in the office of the state comptroller.

Amended by L. 1911, ch. 552.

By an opinion of the Attorney-General, dated May 22, 1913, it was held that this section clearly brings county roads under the jurisdiction of the Commission of Highways as they are roads which are maintained in part by State money.

By an opinion of the Attorney-General under date of April 28, 1909, it was held that the Highway Commission should prescribe rules and regulations for the improvement and repair of county roads; that they should require a uniform system of accounting and see that all State money is honestly and judiciously expended.

L. 1910, ch. 564, as amended by L. 1911, ch. 254, and L. 1913, ch. 473.

**An Act to provide for county roads in certain counties.**

**Section 1. County road system of working highways.**—In a county adjacent to a city of the first class or containing a city of the second class, the board of supervisors of such county may, by concurring vote of at least a majority of the members thereof, by resolution adopt the county road system and at any time and from time to time cause to be designated as county roads such portions of the public highways in such county as they shall deem advisable, outside of the limits of any city in said county, provided that any such public highway so designated as a county road is not a state or county highway as defined in section three of the highway law, and shall cause such designation and a map of such county road to be filed in the clerk's office of such county; the roads so designated shall, as far as practicable, be the leading market roads in such county.

**§ 2. Construction and maintenance of county roads.**—County roads as defined in subdivision three of section three of the highway law and as designated pursuant to this act shall be exclusively under the jurisdiction of the board of supervisors and exempt from the jurisdiction of the highway officers of the several towns and villages in which said county roads are located. The expenses of constructing, maintaining and improving the county roads of such county shall be a county charge. The board of supervisors shall, upon the receipt of the county superintendent's report as provided for by subdivision two-a of section thirty-three of the highway law, consider the estimate in such report. It may by a majority vote of the members thereof approve such estimate or increase or reduce the amount of any of the estimates contained therein. The statement as thus approved, increased or reduced, shall be signed in duplicate by a majority of the members of the board, one copy of which shall be filed in the office of the county clerk, and the other delivered to the county treasurer. The county clerk shall make and transmit a copy of such statement to the highway commission and to the county superintendent. The board of supervisors shall thereupon cause the amounts therein to be raised by the issuance of county bonds therefor or to be assessed, levied and collected in such county in the same manner as other county charges, and such amounts shall be expended only for the purpose specified in such statement. The warrant for the collection of such taxes in such county shall direct the payment of the moneys so collected to the county treasurer to be held by him and paid out for the purpose or purposes specified in such statement, as provided in subdivision two-a of section thirty-three. The construction and maintenance of such county roads shall be under the supervision of the board of supervisors.

**§ 3. Bonding for county roads.**—The board of supervisors of such county may borrow money from time to time for the construction, improvement, maintenance and repair of the county roads in such county, and may issue the bonds or other evidences of indebtedness of the county therefor; but

such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum, and shall not be for a longer term than twenty years, and shall not be sold for less than par.

**§ 4. Acquisition of lands for right of way and other purposes.**—If a county road proposed to be constructed, improved, widened or otherwise altered, shall deviate from the line of a county road already existing, or shall necessitate the acquiring of a right of way for such purpose, the board of supervisors of the county where such county road is or shall be located, shall acquire land for the requisite right of way prior to the actual commencement of the work of construction. The board of supervisors may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction, improvement or maintenance of county roads, or for spoil banks, together with a right of way to such spoil bank, and to any bed, pit, quarry or other place where such gravel, stone or other material may be located. The expenses of acquiring lands for such purposes shall be a county charge.

**§ 179. Sprinkling; removal of filth and refuse.**—Upon petition signed by a majority of the taxpayers owning property abutting upon an improved state or county highway and filed with the town clerk, the town board may set aside any section of such highway outside of a village and contract for the sprinkling of the roadbed with water and also contract for the removal of filth and refuse therefrom. No such contract shall be entered into unless previously approved by the county superintendent. The amount of any such contract so entered into shall be assessed upon the property abutting upon such section in the proportion which the frontage of each parcel thereof bears to the length of the section exclusive of intersecting highways. Such assessment shall be made, levied and collected in the same general manner, and at the same time and by the same officers as the town taxes of said town are assessed, levied and collected.

## ARTICLE VIII.

### Laying Out, Altering and Discontinuing Highways; Private Roads

#### Section 190. Survey for the laying out of a highway.

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§ 190. Survey for the laying out of a highway.—Whenever the town superintendent shall lay out any highway, either upon application to him or otherwise, he shall notify the district or county superintendent, whose duty it shall be to either make a survey, or cause the same to be made, and the town superintendent shall incorporate the survey in an order to be signed by him, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.

**§ 191. Highways by dedication.**—Whenever land is dedicated to a town for highway purposes therein, the town superintendent may with the consent of the town board, either with or without a written application therefor, and without expense to the town, make an order laying out such highway, upon filing and recording in the town clerk's office with such order a release of the land from the owner thereof. A highway so laid out must not be less than two rods in width. Section two hundred does not apply to a highway by dedication. Such town superintendent may also, upon written application and with the written consent of the town board, make an order laying out or altering a highway, or discontinuing a highway, which has become useless since it was laid out, upon filing and recording in the town clerk's office, with such application, consent and order, a release from all damages from the owners of lands taken or affected thereby, when the consideration for such release, as agreed upon between such town superintendent, and owner or owners, shall not in any one case, from any one claimant, exceed one hundred dollars, and from all claimants five hundred dollars. An order of the town superintendent, as herein provided, shall be final.

**§ 192. Application.** Any person or corporation assessable for highway taxes may make written application to the town superintendent of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway. Such application must be approved by the written consent, indorsed thereon or attached thereto, of a majority of the members of the town board.

Amended by L. 1913, ch. 472.

**§ 193. Application for condemnation commissioners.**—Whenever the land is not dedicated to the town for highway purposes, and not released as herein provided, the applicant shall, within thirty days after presenting the application to the town superintendent, and after at least five days' notice to said town superintendent of the time and place of the application to the county court, in this section provided for, by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, and if the county judge require on such notice to such parties interested as he shall direct, apply to the county court of the county where such highway shall be, for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered

or to the uselessness of the highway proposed to be discontinued and to assess the damages by reason of laying out, opening, altering or discontinuing such highway. Such application shall be accompanied by the written undertaking of the applicant executed by one or more sureties, approved by the county judge, to the effect that if the commissioners appointed determine that the proposed highway or alteration is not necessary or that the highway proposed to be discontinued is not useless, the sureties will pay to the commissioners their compensation at the rate of four dollars for each day necessarily spent and all costs and expenses necessarily incurred in the performance of their duties, which amount shall not exceed the sum of one hundred dollars. Whenever the town superintendent of highways of any township shall determine that public necessity requires the laying out of a new or additional highway, and the land therefor cannot be obtained by the dedication of the owners thereof, he may apply to the town board of his town for permission to institute a proceeding to acquire so much land as may be necessary to lay out such new or additional highway, and when such consent shall have been given by the town board of such town, the said town superintendent of highways may apply to the county court of the county in which such proposed highway is situated, for the appointment of commissioners in like manner as is provided by this section where such application is made by any person or corporation assessable for highway taxes, except that when such application shall be made by the town superintendent of highways, that at least five days' notice of the time and place of the application shall be given to the owners of the lands sought to be acquired, providing such owners can be ascertained by such town superintendent, or if the owners thereof are not known to the town superintendent, by the serving of a copy of the notice of such application upon the occupants of said premises. When such application is made by the town superintendent of highways, no undertaking shall be required of the applicant.

Amended by L. 1910, ch. 344.

**§ 194. Appointment of condemnation commissioners, and their duties.**— Upon the presentation of such petition, the county court must appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, and who shall not be related by consanguinity or

affinity within the sixth degree to the applicant or to any person interested in the proceeding or to the owner of any lands to be taken or affected by the laying out, alteration or discontinuance of a highway, as commissioners to determine the questions mentioned in the last section. They shall take the constitutional oath of office, and appoint a time and place at which they shall all meet to hear the town superintendent and supervisor of the town where such highway is situated, and others interested therein. They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof. They may adjourn the proceedings before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages. They shall make duplicate certificates of their decision, and shall file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

**§ 195. Notice of meeting.** The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service can not be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry. If the highway proposed to be laid out shall cross a railroad the applicant shall also cause notice of the time and place of the meeting of the commissioners to be given to the railroad company as required by section ninety of the railroad law.

Amended by L. 1912, ch. 246.

**§ 196. Decision of condemnation commissioners in favor of application.—** If a majority of the commissioners appointed by the

county court shall determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect. If the petition is for the laying out of a highway, the commissioners shall also include in their certificates what the probable cost would be of laying out and completing the proposed highway, in their opinion, based upon the evidence given before them on the hearings.

**§ 197. Damages in certain cases; how estimated.**—The owner of lands within the bounds of a highway discontinued may enclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damages caused by the laying out of a highway through his other lands in place of the discontinued highway.

**§ 198. Decision of condemnation commissioners denying application.**—If a majority of the commissioners appointed by the county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect. The costs and expenses necessarily incurred by such commissioners in the proceedings shall be indorsed upon such duplicate certificates, and upon a confirmation of such decision and of the amount of such costs and expenses by the county court, such costs and expenses not exceeding one hundred dollars shall be payable by the applicants.

**§ 199. Motion to confirm, vacate or modify.**—Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office, any person interested in the proceeding may apply to the court appointing the commissioners for an order confirming, vacating or modifying their decision, and such court may confirm, vacate or modify such decision. If the decision be vacated, the court may order another hearing of the matter before the same or other commissioners. If no such motion is made, the decision of the commissioners shall be deemed final. Such motion shall be brought on upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings, pending therein; and the decision of the county court shall be final, excepting that a new hearing may be ordered as herein provided, and excepting that any such

decision may be reviewed on appeal upon questions affecting jurisdiction, and rulings and exceptions made and taken upon the hearing before the commissioners. If the final decision be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.

**§ 200. Limitations upon laying out highways.**— No highways shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyards of one or more years' growth, and used in good faith for vineyard purposes, or buildings or any fixtures or erections for the purposes of trade or manufactures, or any yard or enclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall be made on the certificate of the town superintendent of the town or towns in which the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate with eight days' notice of the time and place of the hearing before the county court shall be served on the owners of the land, or if they are not residents of the county upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper. The town superintendent shall then present the order of the county court, with the certificate and proofs upon which it was granted, certified by such court, to the appellate division of the supreme court in the judicial department in which the land is situated upon the usual notice of motion, served upon the owner or occupant, or the attorney who appeared for them in the county court. If such appellate division of the supreme court shall confirm the order of the county court, the town superintendent shall then lay out and open such highway as in other cases. The provisions of this section shall not apply to vineyards planted or to buildings, fixtures, erections, yards or enclosures made or placed on such land after an application for the laying out and opening the highway shall have been made. In case the highway to be laid out shall constitute an extension or continuation of a public highway already in use, and shall not, as to such new portion, exceed half a mile in length, the town super-

intendent may lay out such extension or continuation of a width of not less than three rods, provided, however, that it be not less than the widest part of the highway of which it is an extension or continuation. In such case the town superintendent shall specify in his certificate the precise width of the new portion of such highway, and shall certify that such width is as great at least as the widest part of the highway of which it is a continuation or extension. No highway shall be laid out which shall be identical or substantially so with a highway previously discontinued or abandoned for public purposes within seven years of such discontinuance or abandonment, nor where other land or property has been conveyed to the town at the time of such discontinuance or abandonment in counties adjoining cities with upward of one million inhabitants.

*Amended by L. 1911, ch. 624.*

**§ 201. Laying out highways through burying-grounds.**—No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

**§ 202. Costs; by whom paid.**—In all cases of assessments of damages by commissioners appointed by the county court, the costs thereof shall be paid by the town thereof, except that when reassessment of damages shall be had on the application of the party for whom the damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment; and when application shall be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to the first assessment, and may be recovered by action in favor of any person entitled to the same. Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to four dollars and his necessary expenses.

**§ 203. Damages assessed, and costs to be audited.**—All damages to be agreed upon, or which may be finally assessed, and costs against the town, as herein provided, shall be laid before the board

of town auditors, or in towns not having a board of town auditors, before the town board, to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be placed upon the town abstract and levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the supervisor of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid. If the whole amount of damages and costs to be paid by the town be less than five hundred dollars, the town board may borrow the amount thereof, in anticipation of taxes, levied or to be levied therefor, at a rate of interest not exceeding the legal rate.

Amended by L. 1911, ch. 488.

**§ 204. When officers of different towns disagree about highway.**

— When the town superintendent of any town or officers of any village or city having the powers of town superintendents shall differ with the town superintendent or superintendents of any other town or with the officers of such a village or city having the powers of town superintendents in the same county, relating to the laying out of a new highway or altering an old highway, extending into both towns, or a town and a village or city, or upon the boundary line between such towns or such town and a village or city, or when the town superintendent of a town in one county shall differ with the town superintendent of a town or the officers of a village or city having the powers of town superintendents in another county, relating to the laying out of a new highway, or the altering of the old highway, which shall extend into both counties, or be upon the boundary line between such counties, the town superintendents of both towns or the officers of the village or city having such powers shall meet on a five days' written notice, specifying the time and place, within some one of such towns, villages or cities, given by either of such town superintendents, or officers having powers of town superintendents, to make their determination in writing, upon the subject of their differences. If they cannot agree, they or either of them may certify the fact of their disagreement to the county court of that county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town,

village or city, where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they deem proper, and shall decide all questions that shall arise on the hearing, as to the laying out or altering of such highway, its location, width, grade and character of roadbed, or any point that may arise relating thereto; and if they decide to open or alter any highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed. On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part and may order a new appraisal by the same or by other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. This section shall not be so construed as to compel any town or towns to construct, repair or maintain a bridge upon a boundary between towns, where previous to May seventh, nineteen hundred and three, an application had been made to any court, to compel the construction, repair and maintenance of a bridge upon such a boundary line, and such application had been denied.

**§ 205. Difference about improvements.**—When the town superintendent or the officers of a village or city having the powers of town superintendents therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or roadbed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereof beyond such bounds, but cannot agree in regard to the same, upon written application of either of the superintendents or officers and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct that in consideration of the payment of such portion of the additional expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents

may go into such town, village or city, and make the grade and roadbed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the town superintendents of the towns, or the officers of such villages or cities having the powers of such superintendents. Every commissioner appointed as herein provided shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

**§ 206. Highway in two or more towns.**—When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the town superintendents shall be served upon the town superintendent of each town; and the commissioners appointed by the court shall determine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.

**§ 207. Laying out, dividing and maintaining highway upon town line.**—An application to lay out a highway upon the line between two or more towns shall be made to the town superintendents of each town, who shall act together in the matter; and, upon laying out any such highway, the expense of opening, working and keeping the same in repair shall be borne equally by such towns. The town superintendents shall cause a map and survey of the highway to be recorded in the office of the town clerk in each of the respective towns. If such highway be upon a line between one or more towns and a city or incorporated village, such application shall also be made to the officers of such city or

village having the powers of the town superintendents and such officers may agree with the town superintendents of such towns as to division of such expense. Whenever such officers shall disagree, the question shall be submitted to the district or county superintendent or superintendents representing the county or counties, district or districts in which such highway is located and their decision shall be final when approved by the state commission. All highways heretofore laid out upon the line between any two towns or between a town and a city or an incorporated village shall be divided and allotted or redivided and reallotted, recorded and kept in repair in the manner above directed; and all bridges upon such highways shall be built and maintained jointly by the towns whether wholly located within one of them or otherwise.

**§ 208. Final determination, how carried out.** The final determination of commissioners appointed by any court, relating to laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the town superintendent of the town, the same as if they had made an order to that effect. The said town superintendent shall thereupon proceed to construct the highway so laid out, and construct any alteration so provided for, and put same in good condition for public travel. The expense of such construction of such new highway or alteration of an existing highway, shall be a charge upon and against the town in which such highway is constructed or any existing highway is altered, and when same is completed the town board of such town may issue certificates of indebtedness for such expense, to draw interest at the rate of not to exceed five per centum per annum until paid, and shall at the next annual meeting for auditing accounts, after such work is done, and after such certificates may have been issued, audit such claims against the town, including interest, if any, and include same in the annual tax budget to be collected from the taxpayers of said town to pay said indebtedness; such money to be paid over to the supervisor of the town and by him paid and applied to the purposes aforesaid. This amendment is made subject to the provisions of section forty-eight, relating to contracts for construction.

Amended by L. 1913, ch. 318.

**§ 209. Highways by use.**— All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the town superintendent shall open all such highways to the width of at least two rods.

By an opinion of the Attorney-General rendered March 3, 1910, it was held that where a highway has been dedicated to the public for the prescribed period of twenty years or more, the town superintendent may cause a survey to be made thereof and remove fences or other encroachments within the limits of such highway, and the adjacent owner has not become vested with any rights within the bounds of the highway as against the public to defeat such a remedy.

**§ 210. Fences to be removed.**— Whenever a highway shall have been laid out through any inclosed, cultivated or improved lands, in conformity to the provisions of this chapter, the town superintendent shall give to the owner or occupant of the land through which such highway shall have been laid, sixty days' notice in writing to remove his fences; and if such owner shall not remove his fences within sixty days, the town superintendent shall cause them to be removed, and shall direct the highway to be opened and worked.

**§ 211. Private road.**— An application for a private road shall be made in writing to the town superintendent of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out.

**§ 212. Jury to determine necessity and assess damages.**— The town superintendent to whom the application shall be made shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.

**§ 213. Copy application and notice delivered to applicant.**— Such town superintendent shall deliver to the applicant a copy of the application, to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land.

**§ 214. Copy and notice to be served.**— The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and

notice to be served upon the persons to whom it is addressed, by delivering to each of them who reside in the same town a copy thereof, or in case of his absence, by leaving the same at his residence and upon such as reside elsewhere, by depositing in the postoffice a copy thereof to each, properly enclosed in an envelope, addressed to them respectively at their postoffice address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian.

**§ 215. List of jurors.**—At such time and place, on due proof of the service of the notice, the town superintendent shall present a list of the names of thirty-six resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of them, and not interested in such lands.

**§ 216. Names struck off.**—The owners or occupants of the land may strike from the list not more than twelve names, and the applicant a like number; and of the number which remains, the twelve names standing first on the list shall be the jury.

**§ 217. Place of meeting.**—The town superintendent shall then appoint some convenient time and place for the jury to meet, and shall summon them accordingly.

**§ 218. Jury to determine and assess damages.**—The town superintendent and all the persons named and summoned on such jury, shall meet at the time and place appointed; but if one or more of the twelve jurors shall not appear, the town superintendent shall summon so many qualified to serve as such jurors as will be sufficient to make the number present twelve to forthwith appear and act as such; and when twelve shall have so appeared, they shall constitute the jury and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof.

**§ 219. Their verdict.**—The jury shall view the premises, hear the allegations of the parties, and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the town superintendent.

**§ 220. Value of highway discontinued.**—If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a

person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

**§ 221. Papers to be recorded in the town clerk's office.**—The town superintendent shall annex to such verdict the application, and their certificate that the road is laid out, and the same shall be filed and recorded in the town clerk's office.

**§ 222. Damages to be paid before opening the road.**—The damages assessed by the jury shall be paid by the party for whose benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the alteration or discontinuance of a public highway, such damages shall be paid by the town and refunded to the applicant.

**§ 223. Fees of officers.**—Every juror, in proceedings for a private road, shall be entitled to receive for his service one dollar and fifty cents; and town superintendents their per diem compensation to be paid by the applicant.

**§ 224. Motion to confirm, vacate or modify.**—Within thirty days after the decision of the jury shall have been filed in the town clerk's office, the owner or occupant may apply to the county court of the county wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate or modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceedings to the town superintendent of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within two years.

**§ 225. Costs of new hearing.**—If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

**§ 226. For what purpose private road may be used.**—Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed.

**§ 227. Highways or roads along division lines.**—Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads.

**§ 228. Adjournments.**—If any accident shall prevent any of the proceedings required by this chapter relating to the laying out, altering or discontinuing of a highway, or the laying out of a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the town superintendent shall publicly announce such adjournment.

**§ 229. Widening roads; petition.**—When any part of a highway in any town of this state, not in an incorporated village or city, running between two or more villages or cities, has, because of the wearing away by a river or stream or any other natural cause, become narrower than the width required by statute, and is dangerous to the users of such highway, twelve or more resident taxpayers of such town may present a petition to the county court of the county within which such town is situated. The petition shall describe the part of the highway proposed to be widened and state that such highway has become lessened in width by the action of a river or stream or other cause, that it is dangerous to

the traveling public, that the widening and improvement of such highway is necessary for the public convenience and welfare, that the highway is an important leading road between two or more cities or villages, that the cost of such widening and improvement would exceed the sum of two thousand five hundred dollars and would be too burdensome on the town or towns otherwise liable therefor. Such petition shall be verified by at least three of the petitioners. On receipt of the petition the county court shall forthwith appoint three commissioners who shall not be named by any person interested in the proceedings and who shall be taxpayers of such county, but who shall not reside in the town or towns in which the highway, proposed to be widened and improved, is situated.

By an opinion of the Attorney-General under date of June 8, 1909, it was held that the day of election cannot be counted in making up the required number of days previous to an election upon which a petition regarding one of the questions to be voted upon must be filed but that a petition must be filed the full number of days required by law before and not counting election day.

**§ 230. Powers and duties of commissioners.**—The commissioners shall take the constitutional oath of office and appoint a time and place for a meeting to hear all persons interested in the proposed widening of the highway. They shall personally examine the part of the highway proposed to be widened, hear any reasons for or against such widening and ascertain the probable cost of the work. They shall have power to issue subpœnas, administer oaths and examine witnesses; they shall keep the minutes of their proceedings and reduce to writing all oral evidence given before them. They shall make duplicate certificates of their decision, filing one in the town clerk's office of the town in which the said highway is located, and the other, with such minutes and evidence, in the county clerk's office of the county where the highway is located. Such commissioners shall have the same power as to the assessment of damages caused by the widening of such highway as commissioners appointed under this article for the discontinuance, alteration or laying out of a highway, and as to such assessment the same proceeding may be had for the confirmation, vacating or modifying of such decision, as provided in and by this article. The commissioners shall receive a compensation of five dollars for each day necessarily spent in the performance of their duties under this section, and the amount so paid to the said commissioners shall be a charge upon the town or towns in which the highway, proposed to be widened as aforesaid, is located.

**§ 231. Notice of decision to supervisors.**— If a majority of the commissioners shall determine that the proposed widening of the highway is necessary and that the cost thereof would be too burdensome for the town, exceeding in probable cost two thousand five hundred dollars, they shall notify the board of supervisors of the county of such decision. The board of supervisors shall thereupon cause one-half of the amount of the estimated cost to be raised by the county and paid to the supervisor of the town or towns in which that part of the highway proposed to be widened as aforesaid is located, and said supervisor shall apply the sum so received by him towards the payment of the cost of such widening. The balance of the expense shall be raised in the manner provided by law, by the town or towns in which that part of the highway proposed to be widened as aforesaid is located.

**§ 232. Widening, how constructed.**— The town superintendent shall construct such widening of the highway according to plans and specifications adopted by the district or county superintendent and approved by the town board of his town. The bills and expenses incurred in such work shall be audited by the town board and paid by the supervisor upon written order of the town superintendent, after the same shall have been approved by the town board, out of moneys raised for such purpose as provided in the preceding section.

**§ 233. Actions to compel widening; how affected by petition.**— In case an action might lie in any court of this state against the town superintendent of any town or towns to compel such superintendent to widen a part of a highway, the width of which has become less than that required by statute, or in case an action has been brought against such superintendent to compel him to widen a part of a highway, the width of which has become less than that required by statute, the presentation of a verified petition to the county court as provided for in section two hundred and twenty-nine shall prevent the commencing of any such action as aforesaid and cause such an action already commenced, to cease, and shall be a bar to a recovery on the part of the plaintiff of a judgment against such superintendent in any such action instituted or prosecuted to judgment after the passage of this chapter.

**§ 234. Highways abandoned.**— Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out,

shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said periods shall be deemed abandoned as a right of way. The town superintendents shall file, and cause to be recorded in the town clerk's office of the town, a written description, signed by them, of each highway and public right of way so abandoned, and the same shall thereupon be discontinued. There may also be a qualified abandonment of a highway under the following conditions and for the following purposes, to wit: Where it appears to the town superintendents, at any time, that a highway has not become wholly disused as aforesaid, but that it has not for two years next previous thereto, been usually traveled along the greater part thereof, by more than two vehicles daily, in addition to pedestrians and persons on horseback, they shall file and cause to be recorded in the town clerk's office a certificate containing a description of that portion of the highway partly disused as aforesaid and declaring a qualified abandonment thereof. The effect of such qualified abandonment, with respect to the portion of said highway described in the certificate, shall be as follows: It shall no longer be worked at public expense; it shall not cease to be a highway for purposes of the public easement, by reason of such suspension of work thereon; no person shall impair its use as a highway nor obstruct it, except as hereinafter provided, but no person shall be required to keep any part of it in repair; wherever an owner or lessee of adjoining lands has the right to possession of other lands wholly or partly on the directly opposite side of the highway therefrom, he may construct and maintain across said highway a fence at each end of the area of highway which adjoins both of said opposite pieces of land, provided that each said cross-fence must have a gate in the middle thereof at least ten feet in length, which gate must at all times be kept unlocked and supplied with a sufficient hasp or latch for keeping the same closed; all persons owning or using opposite lands, connected by such gates and fences, may use the portion of highway thus inclosed for pasturage; any traveler or other person who intentionally, or by wilful neglect, leaves such gate unlatched, shall be guilty of a misdemeanor, and the fact of leaving it unlatched shall be

**prima facie** evidence of such intent or wilful neglect. Excepting as herein abrogated, all other general laws relating to highways shall apply to such partially abandoned highway.

**Modes of abandonment.** This section provides for abandonment of a highway, (1) where a highway has not been opened and worked within six years from the time it was dedicated to the public, or laid out by the town superintendent either with or without the proceedings provided for by this article; (2) where a highway has not been traveled or used as a highway for six years. Besides these two methods a highway may be discontinued and closed after proceedings had for such purpose as provided in this article.

In an opinion of the Attorney-General, dated May 5, 1909, it was held that "Qualifiedly abandoned roads should not be measured in fixing the State aid for towns. Under the Constitution as interpreted in that point, although the road is not a part of the highway system, the public easement remains." In an opinion, dated January 14, 1913, the Attorney-General held that while the liability and obligation of the municipality and of private persons in maintaining the highway for road purposes while thus placed in suspension, still no control over the land as a road is released, neither does anyone obtain any rights which require the maintenance of the road in its abandoned condition."

The town superintendent has power, in conjunction with the town board, to issue an order to reopen a qualifiedly abandoned highway in accordance with the provisions of section 191 of the Highway Law.

**NOTE.**—Section 61 of the County Law provides that the board of supervisors of the county may discontinue a county highway and the authority under this section appears to be absolute and no reference is made to the State Commission of Highways.

**§ 235. Highways in lands acquired by the United States for fortification purposes deemed abandoned.**—When land sought to be acquired by the United States of America for the purpose of fortifications includes a highway or portion thereof, the condemnation proceedings may include such highways or portion thereof, and the people of the state of New York, any municipality, county or other party claiming an interest therin may be made a party defendant in such proceeding, and the interest of the state, county, municipality or other claimant be determined, and the award made therefor. Forthwith upon the acquisition by the United States of America of land which includes a highway or portion thereof, there shall be filed in the office of the town clerk of the town, and also in the office of the county clerk of the county, in which such land is located, certified copies of the record or transfer to the United States of such land, together with a map of such land, on which map such highway or portion thereof shall be indicated by metes and bounds, and thereupon such highway

or portion thereof shall be deemed discontinued and abandoned for highway purposes, and if proceedings have been taken, pursuant to article six of this chapter for the improvement of such highway by state aid, all such proceedings, together with any appropriation made for the improvement of such highway or portion thereof, as indicated on such map, shall be deemed revoked, vacated and set aside.

**§ 236. Discontinuance of highway.**—Whenever the town superintendent of any town, in which during the past ten years there has been expended the sum of three hundred thousand dollars, or more, for the purpose of macadamizing the highways of such town, shall determine that any portion of any highway or street, not within the limits of an incorporated village, which is the terminus of such street or highway, is unnecessary for highway purposes, and said town superintendent may, by an order to be duly entered in the town clerk's office, direct such highway to be discontinued and abandoned for public purposes. Provided, however, that no portion of such highway to be discontinued shall be greater than one thousand feet of the terminus thereof and that the owners of the land on both sides of such highway or street, for the distance it is proposed to discontinue the same, shall, by written petition to such town superintendent have requested the discontinuance thereof.

**§ 237. Description to be recorded.**—Immediately upon making and entering the order mentioned in section two hundred and thirty-six of this chapter, the said town superintendent shall cause a written description of that portion of the street or highway ordered to be discontinued to be filed and recorded in the office of the town clerk of the town in which the said street or highway is located, and when the same is duly recorded the said portion of the said street or highway shall thereupon be and become duly abandoned and discontinued for highway purposes.

**§ 238. Damages caused by discontinuance.**—Any person or corporation interested as owner or otherwise, in any lands and claiming any loss or damage, legal or equitable, by reason of the discontinuance, abandonment or closing of any street or highway, not within the limits of an incorporated village, under or pursuant to the provisions of the last two sections, may, upon ten days' written notice to the town superintendent of the town in which such lands are situated apply to the supreme court or to

the county court of the county within which such lands are situated for the appointment of commissioners to estimate and determine such loss and damage, whereupon the court shall appoint three disinterested commissioners of appraisal to estimate and determine such damage, and the amount of compensation to be paid by said town therefor, who shall make their report thereupon to such court, and which report when finally confirmed shall be final and conclusive in respect thereto, and the legality and equity of any and all such claims shall be determined by such commissioners and by the court upon the hearing of their report. Any loss or damage so estimated and determined shall be paid by said town as in case of judgment.

**§ 239. Papers, where filed.**—All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the town superintendent as soon as a decision shall have been made thereon in the town clerk's office of the town.

**§ 240. Costs of motion.**—Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. On an uncontested motion to confirm the report of the commissioners so appointed, if said report is favorable to the applicant and confirmed by the court, costs may be allowed not exceeding fifty dollars sufficient to compensate the applicant's attorney for his services in the proceedings. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.

From an opinion of the Attorney-General under date of October 24, 1910, it was held:

"It is evident that the use of moneys \* \* \* moneys raised for the repair and improvement of highways, including state aid, are never available for the construction of new town roads and could not be legally diverted to any other use. The different funds are required to be kept separate by section 107 of the Highway Law, also by order of the State Highway Commission, and a surplus in one fund is not available for use for other work. I am, therefore, of the opinion that moneys known as state aid cannot be used in the building and construction of new town roads or for the payment of damages awarded to land owners in the laying out of a new highway, or for any other purpose except the repair and improvement of the highways of the town.

"In reply to that part of your enquiry as to how the town can procure the necessary money to build a highway, if it cannot be taken from the

general fund for the repair and improvement of the highways, I beg to state that section 90 of the Highway Law requires the town superintendent to make estimates of the amounts that should be raised by tax in the town for the ensuing year, and by subdivision 4 thereof he can make an estimate and present it to the town board of the amount which he deems necessary should be raised for building a town highway that has been newly laid out. It is certainly a miscellaneous purpose not provided for in any other subdivision of that section. There is no limitation to the amount that can be raised for miscellaneous purposes except as it is controlled by the public necessities of the town.

"It is also a purpose that can only arise occasionally in any town and is not of annual occurrence like most of the other purposes mentioned in the act referred to.

"The estimates above mentioned are then laid before the town board and if it approves the several amounts are laid before the board of supervisors and raised in the same way as other highway taxes in the town, but if this method is not deemed expedient and if any town board should not feel that it was authorized to raise the amount as above outlined, a proposition can be submitted as provided by section 97 of the Highway Law to the voters of the town."

## ARTICLE IX.

### Bridges.

#### Section 250. When town or county expense.

- 251. Levy of tax upon county.
- 252. Penalty, and notice on bridge.
- 253. Offense.
- 254. Joint liabilities of towns and their joint contracts.
- 255. Refusal to repair.
- 256. Proceedings in court.
- 257. Supervisor to institute proceedings.
- 258. Duty of superintendents.
- 259. Report of town superintendents, and levy of tax.
- 260. Appeals.
- 261. Power of court on appeal.
- 262. Refusal to repair bridges.
- 263. Resolution of board of supervisors for abolition of toll bridges.
- 264. Investigation by the state commission of highways.
- 265. Acquisition by attorney-general.
- 266. Payment of expense of acquisition.
- 267. Maintenance of bridge.
- 268. Use of toll bridge by public service corporations; conditions; powers of town board.

**§ 250. When town or county expense.**— The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public or free bridges constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so con-

structed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses. When such bridges are constructed over streams or other waters forming the boundary line between a city of the third class and a town, such city and town shall be liable each to pay its just and equitable share of the expenses for the construction, maintenance and repair of such bridges. Except as otherwise provided by law, a city of the third class shall be deemed a town for the purposes of this article. Each of the counties of this state shall also be liable to pay for the construction, care, maintenance, preservation and repair of public bridges lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expense of construction, care, maintenance, preservation and repair, and the whole of such expenses of public bridges lawfully constructed or to be constructed over streams, or waterways, intersecting county roads.

Amended by L. 1914, ch. 199, which supersedes L. 1914, ch. 78.

#### COUNTY LAW.

**§ 61. County highway and bridges.**—A board of supervisors shall, on the application of twenty-five resident taxpayers, when satisfied that it is for the interest of the county, lay out, open, alter or discontinue a county highway therein, or cause the same to be done, and construct, repair or abandon a county bridge therein, or cause the same to be done when the board shall deem the authority conferred on commissioners of highways insufficient for that purpose, or that the interests of the county will be promoted thereby. All expenses so incurred shall be a county charge. Such powers shall not be exercised unless the applicants therefor shall prove to the board the service of a written notice, personally or by mail, on a commissioner of highways of each town in the county, at least twelve days prior to the presentation of such application, specifying therein the object thereof; and when the application is to lay out a highway, or construct a bridge, the route or location thereof; and in all other cases a designation of the highway or bridge to be affected thereby. Whenever the board of supervisors of a county shall determine to construct a bridge in accordance with the foregoing provisions of this section, such board, on behalf of the county, and the town board of a town or in case of a city the board of aldermen or any similar board exercising the functions of aldermen, on behalf of such town or city, may enter into an agreement with the county, to the effect that such town or city will operate and maintain such bridge, in case the bridge is located wholly in a town or city. In case the bridge is constructed over a stream forming the boundary line between two towns or two cities or between a town and city, then they may agree with the county to operate and maintain such bridge jointly, in pro-

portion to the assessed valuation of such town or city. The sum which the town or towns, city or cities are obliged to pay under such an agreement is a charge upon such towns or cities and shall be paid as other town or city charges are paid.

Amended by L. 1914, ch. 233.

§ 63. County aid to towns for the construction and repair of bridges. If the board of supervisors of any county shall deem any town in the county to be unreasonably burdened by its expenses for the construction and repair of its bridges, the board may cause a sum of money, not exceeding two thousand dollars in any one year, to be raised by the county and paid to such town to aid in defraying such expenses.

By an opinion of the Attorney-General rendered May 3, 1910, it was held that where a bridge has been condemned by the Commission and plans and specifications were prepared for the erection of a new bridge, the estimate for which was more than \$1,500, where the proposition for raising the amount was voted down, there is no provision in the Highway Law by which the town can be compelled to repair or rebuild the bridge.

Section 121 of the Canal Law provides that "The Superintendent of Public Works is authorized and required to construct and hereafter maintain, at public expense, road and street bridges over the canals in all places where such bridges were constructed prior to the 20th day of April, 1839; if, in his opinion, the public convenience requires that they should be continued whether theretofore maintained at the expense of the State or of the towns, villages and cities where they are situate."

Section 126 of the Canal Law provides in part that "A street or road bridge should be constructed by the Superintendent of Public Works over a canal or feeder except upon such streets or roads as were laid out, worked or used previously to the construction of the canal or feeder by which said street or road was and is obstructed, and when bridges are constructed or reconstructed upon any such streets or roads, the cost to the State shall in no case be more than is required to preserve in a safe and substantial manner the continuity of such streets or roads so as not to unnecessarily impair their usefulness."

See opinion of the Attorney-General, dated July 2, 1909.

The Attorney-General, in an opinion rendered September 6, 1912, held that the State should bear the expense of the construction of a bridge carrying a State highway over a town highway.

**NOTE.**—Sections 61, 62, 63 and 64, chapter 11, Consolidated Laws (County Law), provide that boards of supervisors may:

"Take over any town bridge making it a county bridge.

"Aid towns in building or repair to the amount of \$2,000, title remaining with the town.

"Reconstruct a town bridge which has been destroyed by the elements when such reconstruction would be too burdensome on the town, making the entire expense a county charge."

**§ 251. Levy of tax upon county.**—Each supervisor shall present to the board of supervisors of his county at its annual session a statement specifying the amount paid during the preceding year ending on the thirty-first of October for the construction,

care, maintenance, preservation and repair of public bridges over streams or other waters forming the boundary of such county. The board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense, and the same when collected shall be paid to the supervisor of such town to be applied by him on the order of the town superintendent after audit as provided in this chapter, toward the payment of such expense.

**§ 252. Penalty, and notice on bridge.**—The town superintendent may fix and prescribe a penalty, not less than one or more than five dollars, for riding or driving faster than a walk on any bridge in his town whose chord is not less than twenty-five feet in length, and put up and maintain in a conspicuous place, at each end of the bridge, a notice in large characters, stating each penalty incurred.

**§ 253. Offense.**—Whoever shall ride or drive faster than a walk over any bridge, upon which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such town superintendent, and specified in the notice.

**§ 254. Joint liabilities of towns and their joint contracts.**—Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines, except where the board of supervisors has otherwise apportioned such expense as provided in section ninety-seven. The town superintendents of all the towns, or of one or more of such towns, the others refusing to act, may, when directed by their respective town boards, enter into a joint contract for making and repairing such bridges.

**§ 255. Refusal to repair.**—If the town board of either of such towns, after notice in writing from the town board of any other of such towns, given by the town clerk thereof, shall not within twenty days give their consent in writing to build or repair any such bridge, and shall not within a reasonable time thereafter direct, by resolution, the same to be done, the town board giving such notice may direct the town superintendent to make or repair such bridge, and then maintain an action in the name of the town, against the town which neglects or refuses to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.

**§ 256. Proceedings in court.**—Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the town board in each of such towns, to build, rebuild or repair such bridges, and if such town boards refuse to build, rebuild or repair such bridge within a reasonable time, either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each supervisor at least eight days before the hearing, may apply to the supreme court at a special term thereof, to be held in the judicial district in which such bridge or any part thereof shall be located, for an order requiring such town boards to direct the town superintendents to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof to the court. Upon the coming in of the report, in case of such reference, or upon or after the hearing of the motion, in case no reference shall be ordered, the court shall make an order thereon as the justice of the case shall require. If the motion be granted in whole or in part, whereby funds shall be needed to carry the order into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town.

**§ 257. Supervisor to institute proceedings.**—The supervisor of any such town shall, when directed by the town board, institute and prosecute proceedings under this chapter, in the name of the town, to compel the town board of such adjoining town or towns to cause the town superintendents thereof to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are thereby authorized.

**§ 258. Duty of superintendents.**—The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the town superintendent of such adjoining towns respectively the town superintendent of such towns shall forthwith meet and cause such bridge to be built, rebuilt or repaired in accordance with plans and specifications prepared or approved by the district or county superintendent, out of any funds in the hands of the supervisors of such towns applicable thereto; if an

inadequate amount of such funds are on hand, the town boards of such towns shall direct the town superintendents thereof to build, rebuild or repair such bridge, and the same shall be done upon credit, or in part for cash or in part upon credit according to the exigency of the case; and such town boards shall direct the superintendents to enter into a contract, to be approved by such town boards, for building, rebuilding or repairing such bridge pledging the credit of each town for the payment of its appropriate share so far as the same shall be upon credit.

**§ 259. Report of town superintendents, and levy of tax.**—The town superintendent of each town shall make a full and verified report of their proceedings in the premises including an accurate account of what has been done in respect to such bridge, and shall attach thereto a copy of the order granted by the supreme court. Such report, account and order shall be certified by the town board and delivered to the supervisor and be presented by him to the board of supervisors of his county. The board of supervisors at their annual meeting shall levy a tax upon each of such towns, when in the same county, and upon the appropriate towns when in different counties, for its share of the costs of building, rebuilding and repairing such bridge, after deducting all payments actually made by the supervisor upon the written order of the town superintendent. Such tax, including all payments, shall in no case exceed the amount specified in the order of the supreme court.

**§ 260. Appeals.**—Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the appellate division of the supreme court for the review of the decision. The appellate division may alter, modify or reverse the order, with or without costs.

**§ 261. Power of court on appeal.**—The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section shall conform to the practice of the supreme court, in case of appeal from an order of a special term to the appellate division.

**§ 262. Refusal to repair bridges.**—Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge

shall have fallen down, or been swept away by a freshet or otherwise, if the town superintendent of the adjoining town or towns, after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining town or towns, each being liable for its just proportion; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for an order requiring such towns severally to reimburse such expenditures, which application shall be made upon papers to be served upon the town superintendents of such towns at least eight days prior thereto; and the court may grant an order requiring each adjoining town or towns to pay its just proportion of the expenditure, specifying the same; and the town superintendent of each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such persons or corporation as incurred the expenditure. The order shall be appealable.

**§ 263. Resolution of board of supervisors for abolition of toll bridges.**—The board of supervisors of any county may, and upon the presentation of a petition signed by fifty per centum of the owners of real property and representing a majority of the assessed valuation of the town or city in which a toll bridge is wholly or partly situated must, except where such bridge extends between the state of New York and a foreign country, pass a resolution that public interest demands the abolition of such toll bridge situate wholly or partly within said county. In case of a toll bridge situated in two counties such resolution shall be a concurrent resolution passed by the boards of supervisors of the counties wherein said bridge is situated. Within ten days after the passage of such resolution the clerk or clerks of the board or boards of supervisors shall transmit certified copies thereof to the state commission of highways. Before transmitting such certified copy or copies to the state commission of highways, the board or boards of supervisors shall investigate as to the value of such toll bridge and shall

prepare an estimate of the probable cost of acquiring the same, and the clerk or clerks shall transmit such estimate, together with any data in relation to the value of such toll bridge which the board or boards of supervisors may secure, to the state commission of highways with the certified copy or copies of such resolution.

Added by L. 1909, ch. 146, and amended by L. 1910, ch. 569.

**§ 264. Investigation by the state commission of highways.**—The state commission of highways shall upon the receipt of such resolution or concurrent resolution, investigate and determine whether the bridge so sought to be abolished is of sufficient public importance to come within the provisions of this article, taking into account the use, location and value of such toll bridge for the purpose of common traffic and travel and shall also investigate as to the value of such toll bridge and from the estimate and data transmitted by the board or boards of supervisors, or from such other information as the commission may secure, prepare an estimate of the probable cost of acquiring such toll bridge. After such investigation such commission shall certify its approval or disapproval of such resolution. If it shall disapprove such resolution, it shall certify its reasons therefor to such board or boards of supervisors. If it shall approve such resolution it shall certify its approval thereof to the attorney-general, and shall transmit to him the estimate made by the commission of the probable cost of acquiring such toll bridge, together with any data the commission may have in its possession in relation to the value thereof.

Added by L. 1909, ch. 146, and amended by L. 1910, ch. 569.

**§ 265. Acquisition by Attorney-General.**—Upon the receipt of such certification of approval the attorney-general shall apply to the court, in the name of the people of the state, for the appointment of a commission to appraise the value of said toll bridge and the franchise thereof and proceed to acquire title to said toll bridge and its franchise rights in accordance with the provisions of the code of civil procedure for the condemnation of property for public purposes. When said commission shall have determined the value of such toll bridge, the attorney-general shall certify such determination to the comptroller and to the board or boards of supervisors of the county or counties wherein such toll bridge is situated. After the receipt thereof, upon a majority vote of the board or boards of supervisors, they shall adopt a reso-

lution approving the purchase of said toll bridge under the provisions of this article and providing for the payment of the county's share thereof and thereupon shall transmit a certified copy of such resolution to the state comptroller. The condemnation and purchase of toll bridges under the provisions of this article shall be taken up and carried forward in the order in which they are finally designated as determined by the date of the receipt in each case of the certified copy of the approval by the state commission of highways.

Added by L. 1909, ch. 146.

§ 266. Payment of expense of acquisition.—One-half of the expense incurred in the condemnation and acquirement of said toll bridge shall be paid by the state treasurer upon the warrant of the comptroller out of any specific appropriations made to carry on the provisions of this article, but no such payment shall be made until the county or counties in which said toll bridge is situate shall have complied with all the provisions hereof. One-half of the expenses thereof shall be a charge, in the first instance, upon the county or counties in which said toll bridge is situate, and the same shall be paid by the county treasurer upon the requisition of the comptroller, but the amount so paid shall be apportioned by the board of supervisors so that thirty-five per centum of such cost shall be a general county charge and fifteen per centum shall be a charge upon the town or towns or city or cities in which said toll bridge is wholly or partly located. In case a toll bridge is located in two counties the fifty per centum of the expense to be borne by the counties shall be apportioned between them on the basis of their assessed valuation and the fifteen per centum shall be apportioned by the board of supervisors upon the town or towns or city or cities in the same manner. The board of supervisors of a county, the town board of a town or the common council of a city may determine that the portion of the expense chargeable to such county, town, or city, as the case may be, shall be raised by taxation and levied and collected as other municipal taxes, or that the money therefor be raised by the issue and sale of municipal bonds. In the case of a town such bonds shall be issued and sold in the manner provided by law for the issue and sale of town bonds, under the town law, to pay judgments.

Amended by L. 1914, ch. 81.

**§ 267. Maintenance of bridge.**— When a toll bridge shall have been acquired by the state under the provisions of this article it shall be maintained as a free bridge and the expense thereof shall be a charge upon the town or towns or city or cities within which it is situated. Upon the acquisition of any toll bridge as provided in this article, the board or boards of supervisors of the county or counties in which said toll bridge is located shall upon notice of such acquisition from the comptroller, accept and maintain the same as a part of the highway system of said county or counties and such acceptance shall be deemed to have been formally taken at the expiration of twenty days from the notice of said acquisition by the state comptroller.

Added by L. 1909, ch. 146.

**§ 268. Use of toll bridge by public service corporations; conditions; powers of town board.**— After a bridge shall be acquired by the state under the provisions of this article, the same shall not be used by any railroad, telephone, gas, electric light, heat or power company or any other public service corporation, for any purpose except upon such terms and the payment of such rental as shall be determined by the town board of the town or towns and the common council of the city or cities within which it is situated. The money received therefor shall be divided equally between the localities. The provisions of this section, however, shall not affect any existing contract for the use of such bridge by any such corporation, except that the compensation provided for such use in such existing contract shall be paid to the localities as herein provided.

Added by L. 1910, ch. 569.

## ARTICLE X.

### Ferries.

#### Section 270. Licenses.

271. Undertaking.

272. Appendages for rope ferries.

273. Superintendent of public works may lease right of passage.

274. When schedules to be posted.

**§ 270. Licenses.**— The county court in each of the counties of this state or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years. No license shall be granted to a person, other than

the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days' written notice from such person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters.

**§ 271. Undertaking.**— Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct.

**§ 272. Appendages for rope ferries.**— Any person licensed to keep a ferry may, with the written consent of the town superintendent of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages for a rope ferry.

**§ 273. Superintendent of public works may lease right of passage.**— The superintendent of public works, may, where ferries are now maintained at tide-water, lease the right of passage for foot passengers across state lands adjoining tide-water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state.

**§ 274. When schedules to be posted.**— Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly

printed in the English language of the rates of ferriage charges thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each day's neglect or refusal to post such schedule or any of them, to be recovered by any person who shall sue therefor in any court of competent jurisdiction.

## ARTICLE XI.

### **Motor Vehicles.**

*(Entire article amended by L. 1910, ch. 374.)*

#### **Section 280. Application of article.**

##### **281. Definitions.**

282. Registration of motor vehicles; age of operator; fees; renewals.
283. Distinctive number; form of number plates.
284. Registration by manufacturers and dealers; re-registration.
285. Exemption of nonresident owners.
286. Signaling and other devices; signals; rules of the road.
287. Speed permitted.
288. Local ordinances prohibited.
289. License of chauffeurs; renewals.
290. Punishment for violation; procedure.
291. Disposition of registration fees; fines and penalties.
292. Rates of toll on motor vehicles.
293. Acts repealed.

**§ 280. Application of article.**— Except as herein otherwise expressly provided, this article shall be exclusively controlling:

1. Upon the registration, numbering and regulation of motor vehicles, and the licensing and the regulation of chauffeurs;
2. On their use of the public highways, and
3. On the accessories used upon motor vehicles and their incidents and the speed of motor vehicles upon the public highways;
4. On the punishment for the violation of any of the provisions of this article.

**§ 281. Definitions.**—The term "motor vehicle" as used in this article, except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except motor bicycles, motor cycles, traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances and such vehicles as run only upon rails or tracks. The term "local authorities" shall include all officers of counties, cities, boroughs, towns or villages, as well as all boards, committees and other public officials of such counties, cities, bor-

oughs, towns or villages. The term "chauffeur" shall mean **any** person operating or driving a motor vehicle as an employee or **for** hire. The term "state" as used in this article, except where otherwise expressly provided, shall also include the territories **and** the federal districts of the United States. The term "owner" shall also include any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. The term "public highway" shall include any highway, county road, state road, public street, avenue, alley, park, parkway **or** public place in any county, city, borough, town or village, except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages.

**§ 282. Registration of motor vehicles; age of operator; fees; renewals.**— 1. Registration by owners. Every owner of a motor vehicle which shall be operated or driven upon the public highways of this state shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state a verified application for registration on a blank to be furnished by the secretary of state for that purpose, containing: (a) A brief description of the motor vehicle to be registered, including the name of the manufacturer and factory number of such vehicle, the character and amount of the motive power stated in figures of horse power in accordance with the rating established by the Association of Licensed Automobile Manufacturers; (b) the name, age, residence, including county and business address, of the owner of such motor vehicle; (c) provided that, if such motor vehicle is used or to be used solely for commercial purposes, the applicant shall so certify.

2. Age of operator. No person shall operate or drive a motor vehicle who is under eighteen years of age, unless such person is accompanied by a duly licensed chauffeur or the owner of the motor vehicle being operated.

3. Registration book. Upon the receipt of an application for registration of a motor vehicle, as provided in this article, the secretary of state shall file such application in his office at Albany and such other places within the state of New York as he may designate and register such motor vehicle or vehicles, with the name, residence and business address of the owner, manufacturer or dealer as the case may be, together with the facts stated in such application, in a book or index to be kept for the purpose,

under the distinctive number assigned to such motor vehicle by the secretary of state, which book or index shall be open to public inspection during reasonable business hours.

4. Certificate of registration. Upon the filing of such application and the payment of the fee hereinafter provided, the secretary of state shall assign to such motor vehicle a distinctive number and, without expense to the applicant, issue and deliver in such manner as the secretary of state may select to the owner a certificate of registration, in such form as the secretary of state shall prescribe, and two number plates at a place within the state of New York named by the applicant in his application. In the event of the loss, mutilation or destruction of any certificate of registration, number plate, license or badge, the owner of a registered motor vehicle or manufacturer, or dealer, or chauffeur, as the case may be, may obtain from the secretary of state a duplicate thereof upon filing in the office of the secretary of state an affidavit showing such fact and the payment of a fee of one dollar.

5. Times for registration and reregistration. Registration applied for on or before August first, nineteen hundred and ten, shall take effect on that date and certificates issued on such application or under any application made prior to January thirty-first, nineteen hundred and eleven, shall expire on the latter date. The fees for such registration shall be one-half of the annual fees provided herein. Registration thereafter shall be renewed annually in the same manner and upon payment of the same annual fee as provided in this section for registration, to take effect on the first day of February, in each year beginning with such date in the year nineteen hundred and eleven; and the certificates of registration issued thereunder or issued between any such dates shall expire on the succeeding thirty-first day of January.

6. Registration fees. The following fees shall be paid to the secretary of state upon the registration or reregistration of a motor vehicle in accordance with the provisions of this article: five dollars upon the registration of a motor vehicle having a rating of twenty-five horse power or less; ten dollars upon the registration of a motor vehicle having a rating of more than twenty-five horse power and less than thirty-five horse power; fifteen dollars upon the registration of a motor vehicle having a rating of thirty-five horse power and less than fifty horse power; twenty-five dollars upon the registration of a motor vehicle having a rating of fifty horse power or more; provided that if a motor vehicle

is originally registered after August first in any year, the register fee for that year shall be one-half of the fee herein provided for; provided that if a motor vehicle other than one used solely for commercial purposes shall have been licensed for four separate years hereunder and for which there shall have been paid the annual registration fees herein provided during said period, the annual registration fees thereafter shall be one-half the amount; and further provided that for motor vehicles which are used or to be used solely for commercial purposes, the fee for such registration shall be five dollars. The provisions hereof with respect to the payment of registration fees shall not apply to motor vehicles owned or controlled by the state, a city or county or any of the departments thereof, but in other respects shall be applicable.

7. Fees in lieu of taxes. The registration fees imposed by this article upon motor vehicles, other than those of manufacturers and dealers and those used solely for commercial purposes, shall be in lieu of all taxes, general or local, to which motor vehicles may be subject.

8. Sale and registration by vendee. Upon the sale or transfer of a motor vehicle registered in accordance with this section, the vendor shall immediately give notice thereof with the name and residence of the vendee to the secretary of state, and the vendee shall, within ten days after the date of such sale or transfer, notify the secretary of state thereof upon a blank furnished promptly by him for that purpose, stating the name and business address of the previous owner, if known, the number under which such motor vehicle is registered and the name, residence, including county and business address, of the vendee. Upon filing such statement duly verified such vendee shall pay to the secretary of state a fee of one dollar, and upon receipt of such statement and fee the secretary of state shall file such statement in his office and note upon the registration book or index such change in ownership.

9. Upon the sale of a motor vehicle by the manufacturer or dealer, which has been registered by the manufacturer or dealer under this article, the vendee shall be allowed to operate the same upon the public highways for a period of fifteen days after taking possession thereof or until he shall have received his certificate of registration and number plates from the secretary of state, providing that during such period the motor vehicle shall have attached thereto, in accordance with the provisions hereof, two number plates bearing the registration number of the dealer under

which it might previously have been operated, and provided, further, that application for registration shall be made by mail or otherwise before such vehicle shall be used.

Amended by L. 1911, ch. 716.

**§ 283. Distinctive number; form of number plates.**—1. Distinctive number must be carried on motor vehicles. No person shall operate or drive a motor vehicle on the public highways of this state after the first day of August, nineteen hundred and ten, unless such vehicle shall have a distinctive number assigned to it by the secretary of state and a number plate issued by the secretary of state with a number corresponding to that of the certificate of registration conspicuously displayed, one on the front and one on the rear of such vehicle, each securely fastened so as to prevent the same from swinging.

2. Number plates to be changed annually. Such number plates shall be of a distinctly different color each year, and there shall be at all times a marked contrast between the color of the number plates and that of the numerals or letters thereon.

3. Form of number plate. Such number plate shall be of metal, at least six inches wide and not less than fifteen inches in length, on which there shall be the initials "N. Y." and there shall be the distinctive number assigned to the vehicle set forth in numerals four inches long, each stroke of which shall be at least five-eighths of an inch in width; provided that in the case of a motor vehicle registered by the manufacturer or dealer there shall be on such plate in addition to the foregoing the letter "M," each stroke of such letter to be at least four inches long and five-eighths of an inch in width. No vehicle shall display the number plates of more than one state at a time, nor shall any plate be used other than those issued by the secretary of state.

Added by L. 1909, ch. 491.

**§ 284. Registration by manufacturers and dealers; re-registration.** 1. Registration by manufacturers and dealers. Every person, firm, association or corporation manufacturing or dealing in motor vehicles may, instead of registering each motor vehicle so manufactured or dealt in, make a verified application upon a blank to be furnished by the secretary of state for a general distinctive number for all the motor vehicles owned or controlled by such manufacturer or dealer, such application to contain: (a) A brief description of each style or type of motor vehicle manufactured or dealt in by such manufacturer or dealer, including the character of

the motor power, the amount of such motor power stated in figures of horse power in accordance with the rating established by the Association of Licensed Automobile Manufacturers; and (b) the name, residence, including county and business address, of such manufacturer or dealer. On the payment of the registration fee of fifteen dollars such application shall be filed and registered in the office of the secretary of state in the manner provided in section two hundred and eighty-two of this article. There shall thereupon be assigned and issued to such manufacturer or dealer a general distinctive number and without expense to the applicant issued and promptly delivered to such manufacturer or dealer at a place within the state of New York to be designated by him in his application a certificate of registration in such form as the secretary of state shall prescribe, and a number plate with a number corresponding to the number of such certificate of registration. Such number plate or duplicate thereof shall be displayed by every motor vehicle of such manufacturer or dealer when the same is operated or driven on the public highways. Such manufacturer or dealer may obtain as many duplicates of such number plate as may be desired upon payment to the secretary of state of one dollar for each duplicate. No plate or sign shall be used other than those furnished by the secretary of state. Nothing in this subdivision shall be construed to apply to a motor vehicle operated by a manufacturer or dealer for private use or for hire.

2. Registration annually. Such registration shall be renewed annually in the same manner and on the payment of the same fee as provided in this section for original registration, such renewal to take effect on the first day of February of each year. Provisions of subdivision five of section two hundred and eighty-two, relating to first registrations made under this article and duration of renewals, shall apply to registration under this section.

Added by L. 1911, ch. 491.

**§ 285. Exemption of nonresident owners.**—The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation doing business in this state, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration numbers

as required thereby. The provisions of this section, however, shall be operative as to a motor vehicle owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory or federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this state.

**§ 286. Signaling and other devices; signals; rules of the road.—**

1. Brakes, horns and lamps, signaling at crossings. Every motor vehicle, operated or driven upon the public highways of this state, shall be provided with adequate brakes in good working order and sufficient to control such vehicle at all times when the same is in use, and a suitable and adequate bell, horn or other device for signaling, and shall, during the period from one-half hour after sunset to one-half hour before sunrise, display at least two lighted lamps on the front and one on the rear of such vehicle, which shall also display a red light visible from the rear. The rays of such rear lamp shall shine upon the number plate carried on the rear of such vehicle in such manner as to render the numerals thereon visible for at least fifty feet in the direction from which the motor vehicle is proceeding. The light of the front lamps shall be visible at least two hundred feet in the direction in which the motor vehicle is proceeding. Every person operating or driving a motor vehicle on the public highways of this state shall also, when approaching a cross road outside the limits of a city or incorporated village, slow down the speed of the same and shall sound his bell, horn or other device for signaling in such a manner as to give notice and warning of his approach.

2. Stopping on signal, and other regulations. A person operating or driving a motor vehicle shall, on signal by raising the hand, from a person riding, leading or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided that, in case such horse or animal appears badly frightened or the person operating such motor vehicle is so signaled to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. In approaching or passing a car of a street railway which has been stopped to allow passengers to alight or embark, the

operator of every motor vehicle shall slow down and if it be necessary for the safety of the public he shall bring said vehicle to a full stop. Upon approaching a pedestrian who is upon the traveled part of any highway and not upon a sidewalk, and upon approaching an intersecting highway or a curve or a corner in a highway where the operator's view is obstructed, every person operating a motor vehicle shall slow down and give a timely signal with his bell, horn or other device for signaling.

3. Rules of the road. Whenever a person operating a motor vehicle shall meet on a public highway any other person riding or driving a horse or horses or other draft animals or any other vehicle, the person so operating such motor vehicle shall seasonably turn the same to the right of the center of such highway so as to pass without interference. Any such person so operating a motor vehicle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor vehicle shall, at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left.

**§ 287. Speed permitted.**— Every person operating a motor vehicle on the public highway of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided, that a rate of speed in excess of thirty miles an hour for a distance of one-fourth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent.

**§ 288. Local ordinances prohibited.**— Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur to whom this article is applicable any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways, excepting such driveways, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages or in any other way

respecting motor vehicles or their speed upon or use of the public highways; and no ordinance, rule or regulation contrary to or in anywise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect; provided, however, that the power given to local authorities to regulate vehicles offered to the public for hire, and processions, assemblies or parades in the streets or public places, and all ordinances, rules and regulations which may have been or which may be enacted in pursuance of such powers shall remain in full force and effect; and provided, further, that local authorities may set aside for a given time a specified public highway for speed contests or races, to be conducted under proper restrictions for the safety of the public; and provided, further, that local authorities may exclude motor vehicles from any cemetery or grounds used for the burial of the dead, and may by general rule, ordinance or regulation exclude motor vehicles used solely for commercial purposes from any park or part of a park system where such general rule, ordinance or regulation is applicable equally and generally to all other vehicles used for the same purposes, and provided further that nothing in this article contained shall impair the validity or effect of any ordinances, regulating the speed of motor vehicles, or of any traffic regulations with regard to the operation of motor vehicles, heretofore or hereafter made, adopted or prescribed pursuant to law in any city of the first class; provided, further, that the local authorities of other cities and incorporated villages may limit by ordinance, rule or regulation the speed of motor vehicles on the public highways, such speed limitation not to be in any case less than one mile in four minutes, and the maintenance of a greater rate of speed for one-eighth of a mile shall be presumptive evidence of driving at a rate of speed which is not careful and prudent, and on further condition that each city or village shall have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the word, "City of \_\_\_\_\_" or "Incorporated village of \_\_\_\_\_," "Slow down to — miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the punishment for violation

thereof, which punishment shall, during the existence of the ordinance, rule or regulation, supersede those specified in subdivision two of section two hundred and ninety of this chapter but, except in cities of the first class, shall not exceed the same. Official copies of all local ordinances passed under the provisions of this subdivision shall be filed with the secretary of state at least thirty days before they shall respectively take effect and all such local ordinances shall be printed in pamphlet form and issued at regular intervals by the secretary of state.

§ 289. License of chauffeurs; renewals.—1. License of chauffeurs. Application for license to operate motor vehicles, as a chauffeur, may be made, by mail or otherwise, to the secretary of state or his duly authorized agent upon blanks prepared under his authority. The secretary of state shall appoint examiners and cause examinations to be held at convenient points throughout the state as often as may be necessary. Such applications shall be accompanied by a photograph of the applicant in such numbers and forms as the secretary of state shall prescribe, said photograph to be taken within thirty days prior to the filing of said application and to be accompanied by the fee provided herein. Before such a license is granted the applicant shall pass such examination as to his qualifications as the secretary of state shall require. No chauffeur's license shall be issued to any person under eighteen years of age. To each person shall be assigned some distinguishing number or mark, and the license issued shall be in such form as the secretary of state shall determine; it may contain special restrictions and limitations concerning the type of motor power, horse power, design and other features of the motor vehicles which the licensee may operate; it shall contain the distinguishing number or mark assigned to the licensee, his name, place of residence and address, a brief description of the licensee for the purpose of identification and the photograph of the licensee. Such distinctive number or mark shall be of a distinctly different color each year and in any year shall be of the same color as that of the number plates issued for that year. The secretary of state shall furnish to every chauffeur so licensed a suitable metal badge with the distinguishing number or mark assigned to him thereon without extra charge therefor. This badge shall thereafter be worn by such chauffeur affixed to his clothing in a conspicuous place, at all times while he is operating or driving a motor vehicle upon the public highway. Said badge shall be valid only during the

term of the license of the chauffeur to whom it is issued as aforesaid. Every person licensed to operate motor vehicles as aforesaid shall indorse his usual signature on the margin of the license, in the space provided for the purpose, immediately upon receipt of said license, and such license shall not be valid until so indorsed. Every application for license filed under the provisions of this section shall be sworn to and shall be accompanied by a fee of five dollars, two dollars of which shall be for his examination aforesaid and three dollars for license fee. The license hereunder granted on or before August first, nineteen hundred and ten, shall take effect on that date, and licenses issued prior to January thirty-first, nineteen hundred and eleven, shall expire on that date. The fees for such licenses shall be one-half of the annual fees provided herein.

2. Chauffeurs' licensed registration book. Upon the receipt of such an application, the secretary of state shall thereupon file the same in his office, and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor vehicles, and when the applicant shall have passed the examination provided for in the preceding section, the number or mark assigned to such applicant together with the fact that such applicant has passed such examination shall be noted in said book or index.

3. Unauthorized possession or use of license or badge. No chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge, nor shall any person while operating or driving a motor vehicle use or possess any license or badge belonging to another person, or a fictitious license or badge.

4. Unlicensed chauffeurs cannot drive motor vehicle. No person shall operate or drive a motor vehicle as a chauffeur upon a public highway of this state after the first day of August, nineteen hundred and ten, unless such person shall have complied in all respects with the requirements of this section; provided, however, that a nonresident chauffeur, who has registered under provisions of law of the foreign country, state, territory or federal district of his residence substantially equivalent to the provisions of this section, shall be exempt from license under this section; and provided, further, he shall wear the badge assigned to him in the foreign country, state, territory or federal district of his residence in the manner provided in this section.

5. **Renewal.** Such license shall be renewed annually upon the payment of the same fee as provided in this section for the original license, such renewal to take effect on the first day of February of each year. The secretary of state may refuse to issue or renew a license if he deems the applicant not qualified to receive such license, but the refusal of the secretary of state may be reviewed by writ of certiorari. For renewals to take effect on and after February first, nineteen hundred and twelve, the fee shall be two dollars.

Amended by L. 1911, ch. 491.

**§ 290. Punishment for violation; procedure.—** 1. The violation of any of the provisions of sections two hundred and eighty-two, two hundred and eighty-three and two hundred and eighty-four of this article shall constitute a misdemeanor punishable by a fine not exceeding fifty dollars.

2. The violation of any of the provisions of section two hundred and eighty-seven of this article shall constitute a misdemeanor punishable by a fine not exceeding one hundred dollars.

3. **Punishment for operating motor vehicle while in an intoxicated condition; for going away without stopping after accident and making himself known.** Whoever operates a motor vehicle while in an intoxicated condition shall be guilty of a misdemeanor. Any person operating a motor vehicle who, knowing that injury has been caused to a person or property, due to the culpability of the said operator, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence, including street and street number, and operator's license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of the place of said injury or accident, then reporting the same to the nearest police station, or judicial officer, shall be guilty of a felony punishable by a fine of not more than five hundred dollars or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment; and if any person be convicted a second time of either of the foregoing offenses, he shall be guilty of a felony punishable by imprisonment for a term of not less than one year and not more than five years. A conviction of a violation of this subdivision shall be reported forthwith by the trial court or the clerk thereof to the secretary of state, who shall upon recommendation of the trial court suspend the license of the person so convicted or if he be an owner the certificate of registration of his motor vehicle and, if no appeal there-

from be taken, or if an appeal duly taken be dismissed, or the judgment affirmed, and upon notice thereof by said clerk, the secretary of state shall revoke such license or in the case of an owner the certificate of registration of his motor vehicle, and shall order the license or certificate of registration delivered to the secretary of state, and shall not reissue to him said license or certificate of registration or any other license or certificate of registration unless the secretary of state in his discretion, after an investigation or upon a hearing, decides to reissue or issue such license or certificate.

4. Any chauffeur operating a motor vehicle while his license is suspended or revoked shall be guilty of a misdemeanor.

5. Any person who operates any motor vehicle while a certificate of registration of motor vehicle issued to him is suspended or revoked shall be guilty of a misdemeanor.

6. Upon a third or subsequent conviction of a chauffeur for a violation of the provisions of section two hundred and eighty-seven, or an ordinance, rule or regulation regulating speed of motor vehicles under section two hundred and eighty-eight, the secretary of state, upon the recommendation of the trial court, shall forthwith revoke the license of the person so convicted and no new license shall be issued to such person for at least six months after the date of such conviction nor thereafter except in the discretion of the said secretary of state.

7. The violation of any of the provisions of section two hundred and eighty-nine of this article shall constitute a misdemeanor punishable by a fine not exceeding fifty dollars.

8. Any person making a false statement in the verified application for registration shall be guilty of a misdemeanor punishable by a fine of not exceeding fifty dollars.

9. Any person violating any of the provisions of any section of this article, which violation is stated separately to be a misdemeanor, is punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both, and for a violation of any other provision of this article, for which violation no punishment has been specified, shall be guilty of a misdemeanor punishable by a fine of not exceeding twenty-five dollars.

Amended by L. 1913, ch. 1.

10. Certifying conviction to the secretary of state. Upon the conviction of any person for a violation of any of the provisions of this article the trial court or the clerk thereof shall immediately

certify the facts of the case, including the name and address of the offender, the judgment of the court and the sentence imposed, to the secretary of state, who shall enter the same either in the book or index of registered motor vehicles or in the book or index of registered chauffeurs, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in a book or index of offenders to be kept for such purpose. If any such conviction shall be reversed upon appeal therefrom, the person whose conviction has been so reversed may serve on the secretary of state a certified copy of the order of reversal, whereupon the secretary of state shall enter the same in the proper book or index in connection with the record of such conviction.

11. Release from custody, bail, et cetera. In case any person shall be taken into custody charged with a violation of any of the provisions of this article, he shall forthwith be taken before the nearest magistrate, captain, lieutenant, clerk of the court or acting lieutenant who shall have the power of a magistrate and be entitled to an immediate hearing or admission to bail, and if such hearing cannot then be had, be released from custody on giving a bond or undertaking, executed by a fidelity or surety company authorized to do business in this state, or other bail in the form provided by section five hundred and sixty-eight of the code of criminal procedure, such bond or undertaking to be in an amount not exceeding one hundred dollars, if the charge be for a misdemeanor, except as herein provided where the charge is a violation of subdivision three of section two hundred and ninety of this article, for his appearance to answer for such violation at such time and place as shall then be indicated. In case a person is taken into custody charged with being guilty of a felony in violation of any of the provisions of this article, such bond or undertaking shall be in an amount not less than one thousand dollars. On giving his personal undertaking to appear to answer any such violation at such time and place as shall then be indicated, secured by the deposit of a sum of money equal to the amount of such bond or undertaking, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor vehicle, or in case such person taken into custody is not the owner, by leaving the motor vehicle as herein provided with a written consent given at the time by the owner who must be present, with such officer; or in case such person is taken into custody

because of a violation of any of the provisions of this article other than on a charge of violating any of the provisions of subdivision three of section two hundred and ninety and such officer is not accessible, be forthwith released from custody on giving his name and address to the person making the arrest and depositing with such arresting officer the sum of one hundred dollars, or in lieu thereof, in case the person taken into custody is the owner, by leaving the motor vehicle, or, in case such person taken into custody is not the owner, by leaving the motor vehicle with a written consent at the time by the owner who must be present; provided that, in any such case, the officer making the arrest shall give a receipt in writing for such sum or vehicle deposited and notify such person to appear before the most accessible magistrate, describing him, and specifying the place and hour. In case such bond or undertaking shall not be given or deposit made by the owner or other person taken into custody, the provisions of law in reference to bail, in case of misdemeanor, shall apply, where the charge is a violation of subdivision three of section two hundred and ninety of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

Amended by L. 1913, ch. 1.

12. Holding defendant to answer where magistrate has not jurisdiction to try offender; admitting to bail. In case the magistrate before whom any person shall be taken, charged with the violation of any provision of this article, shall not have jurisdiction to try the defendant, but shall hold the defendant to answer as provided by section two hundred and eight of the code of criminal procedure, he shall admit such defendant to bail upon his giving a surety company's bond or undertaking to appear to answer for such violation at such time and place as shall then be indicated, or upon his giving a written undertaking in the form provided in section five hundred and sixty-eight of the code of criminal procedure in a sum not exceeding one hundred dollars, except that in a case where the defendant is charged with a violation of any of the provisions of subdivision three of section two hundred and ninety of this article, the provisions of law in reference to bail in cases of a misdemeanor or a felony as the case may be shall apply exclusively.

13. Disposition and return of bail. Such bail as may be deposited as herein provided shall be held by the officer accepting the

same or the clerk of the court. Upon the person who has been taken into custody and given security or bail for his appearance surrendering himself for trial and upon the conclusion of such trial the court shall issue to the defendant an order upon the magistrate or clerk of the court or other officer authorized to accept bail to return or deliver back said security or bail as was given

14. A conviction of violation of any provision of this article shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating a motor vehicle.

**§ 291. Disposition of registration fees; fines and penalties.—**

1. The registration fees provided herein shall be paid by the secretary of state into the state treasury.

2. Disposition of fines and penalties. On the first day of each month or within ten days thereafter all fines, penalties or forfeitures collected for violations of any of the provisions of this article or of any act in relation to the use of the public highways by motor vehicles now in force or hereafter enacted, under the sentence or judgment of any court, judge, magistrate or other judicial officer having jurisdiction in the premises, shall be paid over by such court, judge, magistrate or other judicial officer to the treasurer of the state, with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, sentence or judgment imposed. On the first day of each month or within ten days thereafter, every judge, magistrate or clerk of a court having jurisdiction of the violation of any of the provisions of this article, shall make and forward to the treasurer of the state, a verified report of all criminal actions or proceedings instituted or tried before him or it during the preceding calendar month for violation of any of the provisions of this article, which report shall set forth the name and address of the defendants, the nature of the offenses and the fines and penalties collected or imposed by such court, judge, magistrate or judicial officer, which report shall be open to inspection during reasonable business hours to any citizen of the state. On or before the first day of February of each year, the treasurer shall transmit to each branch of the legislature a statement showing the amount of the receipts under this article during the preceding fiscal year paid into the state treasury.

3. All moneys paid into the state treasury pursuant to this article shall be appropriated and used for the maintenance and repair of the improved roads of the state, under the direction of the state commission of highways.

§ 292. **Rates of toll on motor vehicles.**—Where a different rate is not otherwise prescribed or permitted by law, any person or corporation maintaining a plankroad, turnpike road or bridge and authorized, or which shall be hereafter authorized, to receive tolls for the passage of vehicles over the same, may charge and receive for each and every motor vehicle propelled by any power other than animal power, passing over the same, a toll rate not greater than the maximum rate allowed by law to be charged and received for the passage of a vehicle drawn over such road or bridge by two animals, provided that for such motor vehicles designed to carry only two persons the rate of toll charged or received shall not exceed the maximum rate allowed by law to be charged and received for the passage of a vehicle drawn over such road or bridge, without a load, by a single animal.

§ 293. **Acts repealed.**—All acts or parts of acts inconsistent with this article or contrary thereto are hereby expressly repealed.

## ARTICLE XII.

### Miscellaneous Provisions.

Section 320. Construction or improvement of highways by county and town.

320a. County system of roads.

321. When commissioners do not act.

322. Intemperate drivers not to be engaged.

323. Drivers, when to be discharged.

324. Leaving horses without being tied.

325. Owners of certain carriages liable for acts of drivers.

326. Term "carriage" defined.

327. Entitled to free use of highways.

328. Depositing ashes, stones, sticks, etc., upon the highways.

329. Steam traction engines on highways.

330. Injuries to highways.

331. When town not liable for damages.

332. Law of the road.

333. Trees; to whom they belong.

334. Injuring fruit or shade trees.

335. Penalty for falling trees.

336. Fallen trees to be removed.

337. Penalties, how recovered.

338. Acquisition of plank roads.

339. Borrowing money; bonds.

**Section 340. Raising money to pay bonds and interest.**

- 341. Roads so acquired to be part of highway system.
- 342. When road is in two or more counties.
- 343. Albany post road; railroad tracks thereon.

**§ 320. Construction or improvement of highways by county and town.** The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof in one or more towns of the county or of a highway laid out along the boundary line between a city or village and a town or towns, at the joint expense of the county and town, as provided in this section. The board may, by resolution, direct the district or county superintendent to examine such highway or sections thereof, and report thereon, and if the board considers such highway or section thereof, to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimates therefor and such district or county superintendent shall, subject to the direction and control of the board of supervisors, have the same powers and duties with respect to such highway or section thereof as are given the division engineer with respect to state and county highways in section one hundred and twenty-five of this chapter. Such maps, plans and specifications may provide for the change in grade of a highway already existing if thereby a lessened gradient may be obtained without decreasing the usefulness of the highway. Upon the completion of such preliminary maps, plans, specifications and estimates they shall be submitted to the board of supervisors for approval, and such board may thereupon adopt a resolution providing for the construction or improvement of such highway in accordance with such maps, plans, specifications and estimates as may be approved by it. The board of supervisors shall award contracts for the construction or improvement of such highway and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts and the award, execution and fulfillment thereof. Such contract may be awarded to the town board of any town in which such highway or section thereof is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto so far as may be. The board of supervisors

shall determine the portion of the cost of the construction or improvement of such highway to be borne by the county and the portion to be borne by the town or towns in which such highway \*contract may be awarded to the town board of any town in is located. The cost of the portion constructed or improved within the boundaries of a city shall be borne by the county. The amount to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by the town or towns in which the highway is located shall be levied and collected as a town charge and when collected shall be paid into the county treasury. If such highway or section thereof deviate from the line of a highway already existing, the board of supervisors shall acquire land for the requisite right of way, and such board may also acquire lands for the purpose of obtaining gravel, stone or other material, when required for the construction or improvement of such highway or section thereof, or for spoil banks, together with a right of way to such spoil banks and to any bed, pit, quarry or other place where such gravel, stone or other material may be located, and the provisions of sections one hundred and forty-eight to one hundred and fifty-five, both inclusive, shall apply to the acquisition of such lands as far as may be, except that the cost of such lands and the expenses incident to acquiring the same shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. If the construction or improvement of such highway involve the elimination of a grade crossing the portion of the cost of such elimination and the construction of a new crossing chargeable to the town in pursuance of law shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. The amount so paid by the town shall not be considered in determining the minimum amount to be levied and collected in each year for the repair and improvement of highways as provided in section ninety-four of this chapter nor shall such amount be considered in determining the amount to be paid by the state to the town for the repair and improvement of highways therein. The board of supervisors may by resolution authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of such towns by temporary loan in anticipation of the next succeeding

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\* So in original.

tax levy or of an issue of bonds before such levy, or by the issue and sale of bonds, to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter relating to a resolution authorizing a town to borrow money to pay its share of the cost of the construction or improvement of a county highway. The construction or improvement authorized by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained at the sole expense of the towns in which they are located, unless the board of supervisors shall apportion a share of the expense thereof upon the county.

Amended by L. 1914, ch. 198.

**§ 320-a. County system of roads.** The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof, in one or more towns of the county at the joint expense of the county and town or towns, and may prepare a map of a definite system of county roads for the county for such improvement.

The board may by resolution direct the county superintendent to supervise the preparation of grade and culvert work of a road, so designated by said map for improvement, by the town superintendent of the town in which such improvement shall be made, and upon the completion thereof by the town, and the county superintendent's certification that the road is so prepared and that the town is equipped with sufficient machinery to properly perform the work, such machinery to be furnished by the town and used during the roads construction, the board may direct the construction of an improved road under the direction of a committee known as the highway officials of the county as herein-after provided. The construction work shall be under the charge and supervision of the town superintendent of the town in which the work is being done. If for any cause the town superintendent

is incapacitated or in the opinion of the county superintendent is incompetent to properly take charge of the work, some competent person shall be designated by the county superintendent by and with the advice and consent of the town board and the compensation of the town superintendent or person in charge shall be a town charge.

The employment of convict labor on roads so constructed shall be authorized and permitted, in the discretion of the superintendent of state prisons, upon the requisition of the county superintendent of highways.

The highway officials of the county under this section shall consist of the county superintendent, three members of the board, appointed by the chairman. The supervisor of the town in which a road is being improved shall be a member of the said committee on all questions involving the work in the town of which he is the supervisor.

Unless the advice and directions of the highway officials shall be followed in the prosecution of the work, no liability therefor shall accrue to the county for its share of the cost of work.

The cost of such improvement other than that apportioned to the towns shall be a county charge. The amount of the cost of such improvement so to be borne by the county shall be levied and collected as a county charge and paid in to the county treasurer. The resolution of the board of supervisors providing for the construction or improvement of such highway, may authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of such towns to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter, relating to a resolution authorizing a town to borrow money for highway purposes. Payments therefrom shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent countersigned by the chairman of the highway officials committee. Said orders shall be drawn to the order of the supervisor of the respective towns where roads are being constructed to be disbursed by them, upon the orders of the town superintendent or person designated in his stead, in the same manner as highway

disbursements are now made and provided for, under the town highway bureau of the highway department.

Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained at the sole expense of the towns in which they are located, unless the board of supervisors shall apportion a share of the expense thereof upon the county.

Added by L. 1914, ch. 61.

**§ 321. When commissioners do not act.**—When a commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the courts which appointed him shall appoint another in his place.

**§ 322. Intemperate drivers not to be engaged.**—No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or to the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment.

**§ 323. Drivers, when to be discharged.**—If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice.

**§ 324. Leaving horses without being tied.**—No driver of any carriage used for the purpose of conveying passengers for hire shall leave the horse attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars.

**§ 325. Owners of certain carriages liable for acts of drivers.—** The owners of every carriage running or traveling upon any turnpike, road or highway, for the conveyance of passengers, shall be liable jointly and severally, to the party injured, for all injuries and damages done by any person in the employment of such owners, as a driver, while driving such carriage, whether the act occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

**§ 326. Term "carriage" defined.—** The term "carriage" as used in this article shall be construed to include stage coaches, wagons, carts, sleighs, sleds, automobiles or motor vehicles, and every other carriage or vehicle used for the transporation of persons and goods, or either of them, and bicycles, tricycles and all other vehicles propelled by manumotive or pedomotive power, or by electricity, steam, gasoline or other source of energy.

**§ 327. Entitled to free use of highways.—** The commissioners, trustees or other authorities having charge or control of any highway, public street, park, parkway, driveway, or place, shall have no power or authority to pass, enforce or maintain any ordinance, rule or regulation by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, parkway, park, or place, at any time when the same is open to the free use of persons having and using other pleasure carriages, except upon such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages. But nothing herein shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parks, parkways, and places, or the regulation of the speed of carriages, vehicles or engines, in public parks and upon parkways and driveways in the city of New York, under the exclusive jurisdiction and control of the department of parks of said city, nor prevent any such commissioners, trustees or other authorities in any other city from regulating the speed of any vehicles herein described in such manner as to limit and determine the proper rate of speed with which such vehicle may be propelled nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances nor to prohibit the use of any vehicle upon that part of the highway, street, park, or parkway, commonly known as the footpath or sidewalk.

**§ 328. Depositing ashes, stones, sticks, etc., upon the highway.—** Any person who shall deposit or throw loose stones in the gutter or grass adjoining a highway, or shall deposit or throw upon a highway, ashes, papers, stones, sticks, or other rubbish, shall be liable to a penalty of ten dollars to be sued for and recovered by the town superintendent. No stone or other rubbish shall be drawn to and deposited within the limits of any highway, except for the purpose of filling in a depression or otherwise improving the highway, without the consent and under the direction of the town superintendent.

**§ 329. Traction engines on highways.—** The owner of a steam roller, steam traction engine, any other machinery propelled or driven by steam, or of any gasoline driven traction engine, his servant or agent, shall not allow, permit or use the same, to pass over, through or upon any public highway or street except upon railroad tracks, unless such owner or his agents or servant shall send before the same a person of mature age, at least one-eighth of a mile in advance, who shall notify and warn persons traveling and using such highway or street with horses or other domestic animals, of the approach thereof, and at night such person shall carry a red light, except in incorporated villages and cities.

Amended by L. 1914, ch. 64.

**Damages for failure to comply.** Where a steam roller is used upon the highway without sending a person ahead to warn travelers of its approach, and the plaintiff's horse is frightened thereby, a verdict for the plaintiff is warranted if there be no contributory negligence on his part. Buchanan's Sons v. Cranford Co., 112 App. Div. 278, 98 App. Div. 378 (1906).

**§ 329-a. Lights on vehicles.—** Every vehicle on wheels whether stationary or in motion, while upon a public highway or bridge shall have attached thereto a light or lights to be visible from the front and from the rear from one hour after sunset to one hour before sunrise; provided, however, that this section shall not apply to a vehicle designed to be propelled by hand or to a vehicle designed principally for the transportation of hay or straw while loaded with such commodities. Upon the written application and presentation of reasons therefor by the owner of the vehicle, the state commission of highways may in writing, and subject to such requirements as it may elect to impose, but without expense to the applicant, except said vehicle from the provisions of this section for such period of time as the commission may determine. Nothing in this section shall be construed to affect the provisions of any existing statute, rule or regulation requiring lights on motor

vehicles or affecting the obligations of operators or occupants thereof. A person violating the provisions of this section shall thereby incur a penalty of five dollars for each violation, to be recovered by the said town or village in which the violation occurs.

Added by L. 1914, ch. 32.

**§ 330. Injuries to highways.**—Whoever shall injure any highway or bridge maintained at the public expense, by obstructing or diverting any creek, water-course or sluice, or by dragging logs or timber on its surface or by drawing or propelling over the same a load of such weight as to injure or destroy the culverts or bridges along the same, or of such weight that will destroy, break or injure the surface of any improved state, county or town highway, or by any other act, or shall injure, deface or destroy any mile-stone or guide-post erected on any highway, shall for every such offense forfeit treble damages.

Amended by L. 1910, ch. 568.

#### PENAL LAW, SECTION 1423.

I. A person who wilfully or maliciously displaces, removes, injures or destroys a public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way, is punishable by imprisonment for not more than two years.

II. A person who wilfully or maliciously displaces, removes, injures or destroys a mile-board, mile-stone, danger sign or signal, or guide sign or post, or any inscription thereon, lawfully within a public highway; or who, in any manner paints, puts or affixes any business or commercial advertisement on or to any stone, tree, fence, stump, pole, building or other structure, which is the property of another, without first obtaining the written consent of such owner thereof, or who in any manner paints, puts or affixes such an advertisement on or to any stone, tree, fence, stump, pole, mile-board, mile-stone, danger-sign, danger-signal, guide-sign, guide-post, billboard, building or other structure within the limits of a public highway is guilty of a misdemeanor. Any advertisement in or upon a public highway in violation of the provisions of this subdivision may be taken down, removed or destroyed by any one.

Amended by L. 1911, ch. 316.

**NOTE.**—Section 73 of the Highway Law provides that in case of any injuries to a highway as covered by this section, the town superintendent shall bring an action in the name of the town to recover damages therefor. See Attorney-General's opinion, dated December 14, 1911, also sections 74, 330, 46 of the Highway Law, and sections 1530, 1841, 1857 of the Penal Law.

**§ 331. When town not liable for damages.**—No town shall be liable for any damage resulting to person or property by the reason of the breaking of any bridge, sluice or culvert, by transportation on the same of any traction engine, portable piece of machinery, or of any vehicle or load, together weighing eight tons or over, but any owner thereof or other person engaged in transporting or directing the same shall be liable for all damages resulting therefrom.

**§ 332. Law of the road.—** 1. Whenever any persons traveling with any carriages, or riding horses or other animals, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages, horses, or other animals to the right of the center of the road, so as to permit such carriages, horses, or other animals to pass without interference or interruption.

2. Any carriage or the rider of a horse or other animal, overtaking another shall pass on the left side of the overtaken carriage, horse or other animal. When requested to do so, the driver or person having charge of any carriage, horse or other animal, traveling, shall, as soon as practicable, turn to the right, so as to allow any overtaking carriage, horse or other animal free passage on his left.

3. In turning corners to the right, carriages, horses or other animals shall keep to the right of the center of the road. In turning corners to the left, they shall pass to the right of the center of intersection of the two roads.

4. Any person neglecting to comply with, or violating any provision of this section shall be liable to a penalty of five dollars to be recovered by the party injured, in addition to all damages caused by such neglect or violation.

See Penal Law, § 1425.

**§ 333. Trees; to whom they belong.—** All trees standing or lying on any land within the bounds of any highway, shall be for the proper use of the owner or occupant of such land, except that they may be required to repair the highway or bridges of the town.

By an opinion of the Attorney-General rendered May 4, 1911, it was held that where the shade trees stand on highways, the soil of which belongs to adjacent owners subject to its use as a public highway, the owners may trim and cut such trees or grant permission to do so without the consent of the town superintendent where such cutting or trimming does not interfere with the proper use of the highway by the public.

**§ 334. Injuring fruit or shade trees.—** It shall be unlawful for any person or persons whatsoever in this state to hitch any horse or other animal to or leave the same standing near enough to injure any fruit or forest tree growing within the bounds of the public highway, or used as a shade or ornamental tree around any schoolhouse, church or public building, or to cut down or mutilate in any way any such ornamental or shade tree; but the right of property owners along the highway to cultivate, train and

use such shade trees shall not be impaired or abridged hereby. Any person or persons guilty of violating the provisions of this section shall be deemed guilty of misdemeanor, and shall be punishable by a fine of not less than five dollars, nor more than twenty-five dollars for each such offense, and in case of failure to pay any fine imposed, may be committed to jail, not exceeding one day for each dollar of such fine. Courts of special sessions having jurisdiction to try misdemeanors, as provided by section fifty-six of the code of criminal procedure, shall have exclusive jurisdiction to try offenders in all cases occurring in the same manner as in other cases, where they now have jurisdiction, and subject to the same power of removal, and to render and enforce judgments, to the extent herein provided. All fines collected under the provisions of this act shall be paid when the offense is committed in a town outside of incorporated villages, to the supervisor of the town, to be used as the town board and town superintendent may direct. When the offense is committed in any village of the county, which by law is constituted a separate road district, the fine shall be paid to the treasurer of said village, to be used as the board of trustees may direct.

**§ 335. Penalty for falling trees.**— If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream.

**§ 336. Fallen trees to be removed.**— If any tree shall fall, or be fallen by any person from any inclosed land into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two days; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed.

**§ 337. Penalties, how recovered.**— All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the town superintendent, in the name of the town in which the offense shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town.

**§ 338. Acquisition of plank roads.**— The board of supervisors of any county, except a county wholly within the city of New

York, except the county of Erie, may by a vote of a majority of the members thereof, by resolution, determine to acquire the rights and franchises of any individual or corporation, lawfully entitled to exact toll or charge for walking, riding or driving over any plankroad or turnpike, or a bridge within such county, erected over any unnavigable stream, or over the Hudson river above Waterford. Upon the adoption of such a resolution, the board of supervisors shall acquire such rights, franchises and property by purchase, if able to agree with the owners thereof, and otherwise by condemnation in the name of the county.

Amended by L. 1914, ch. 200.

**§ 339. Borrowing money; bonds.**—The board of supervisors of such county may borrow money for the acquisition of such rights, franchises, and property, and may issue the bonds or other evidences of indebtedness of the county therefor, but such bonds or other evidences of indebtedness shall not bear a rate of interest exceeding five per centum per annum and shall not run for a longer period than twenty years and shall not be sold for less than par.

**§ 340. Raising money to pay bonds and interest.**—Except in the counties of Rensselaer, Onondaga, Albany and Columbia, the amount of such bonds in whole or in part together with the interest thereon may be apportioned by the boards of supervisors upon the towns, cities and villages constituting separate highway districts, in which such plankroad, turnpike or bridge is located, in such proportions as the boards may deem just and the amount so apportioned to each municipality for the payment of the principal and interest of such bonds shall be annually levied and collected at the same time and in the same manner as money for other county charges. In the counties of Rensselaer and Columbia, the boards of supervisors, in making up the annual tax budget of the counties, shall each year levy and assess upon and against the taxable property in said counties in addition to the amounts levied and assessed for other county charges, an amount sufficient to pay the interest falling due and payable on the said bonds during such year, and also an amount sufficient to pay the proportion of the years fixed at the time during which said bonds shall run from their issue to maturity. The amount raised by tax in each year for the payment of the principal of said bonds shall be preserved intact by the county treasurers of said counties until said bonds mature and are payable, and upon the maturity of said bonds, said county

treasurer shall pay the same in full out of the moneys so raised by annual tax therefor and shall thereupon take back said bonds with receipts for the payment thereof and deliver them to the boards of supervisors of said counties for cancellation. Said county treasurer shall deposit at interest the said moneys yearly raised by tax for payment of the principal of said bonds in such bank or depository as shall be designated by the boards of supervisors of said counties, and the amount realized from the interest thereon shall be used for the purposes of the said counties under the direction of the said boards of supervisors.

**§ 341. Roads so acquired to be part of highway system.**—A plankroad, turnpike or bridge acquired pursuant to this article shall become a part of a highway system of such county and of the towns, cities and villages in which the same is located, and shall thereafter be repaired and maintained in the same manner as the other highways or bridges therein.

**§ 342. When road is in two or more counties.**—When a plankroad, turnpike, toll road or bridge is partly in one county and partly in another, the boards of supervisors of the said counties shall act together in the manner prescribed above, and determine the amount to be paid to said plankroad, turnpike, toll road or bridge company, by each county, and such amount against each county, after such determination, shall be paid by each county.

**§ 343. Albany post road; railroad tracks thereon.**—The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel. No trustees of any village or corporation of any city upon its route, or town superintendents of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect. This section shall not apply to any portion of said road within the city of New York, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike, nor to the town of Cortlandt or the village of Sing Sing, in Westchester county.

Amended by L. 1910, ch. 668.

## ARTICLE XIII.

**Saving Clause; Laws Repealed; When to Take Effect.**

- Section 350. Transfer of powers and duties of state engineer.  
351. Transfer of records; eligibility of present employees.  
352. County engineers and superintendents of highways to be continued in office.  
353. Pending actions or proceedings.  
354. Saving clause.  
355. County highway maps preserved.  
356. Construction.  
357. When to take effect.  
18. Saving clause (L. 1913, ch. 80).  
19. When to take effect (L. 1913, ch. 80).

§ 350. Transfer of powers and duties of state engineer.—On and after the taking effect of this chapter, and the appointment and qualification of the state commission as herein authorized, all the powers and duties of the state engineer in respect to highways and bridges, conferred and imposed by any statute of this state, shall be transferred to the department of highways to be exercised and performed by the state commission of highways as provided herein.

§ 351. Transfer of records; eligibility of present employees.—The state engineer shall transfer and deliver to the state commission of highways all contracts, books, maps, plans, papers and records of whatever description, in his possession when such commission is appointed and have qualified, pertaining to the construction, improvement, maintenance and supervision of highways and bridges and such commission is authorized at such time to take possession of all such contracts, books, maps, plans, papers and records. The commission may also retain in its employment resident and other engineers, levelers, rodmen, clerks and employees engaged or connected with the department of highways in the office of the state engineer, or employed by him in connection with the powers and duties exercised and performed by him in respect to highways and bridges, and all such engineers, clerks and employees shall be eligible to transfer and appointment to positions under the commission.

§ 352. County engineers and superintendents of highways to be continued in office.—County engineers and superintendents of highways in office when this chapter takes effect shall be continued in office during their present term of office and until the district or county superintendents shall have been appointed and have qualified as provided in this chapter. Such county engineers and

superintendents of highways shall exercise the powers and perform the duties hereby conferred and imposed upon district or county superintendents until the appointment and qualification of a district or county superintendent as above provided. Upon the appointment and qualification of a district or county superintendent for the county for which such county engineer or superintendent of highways is appointed all contracts, books, maps, plans, papers, and records pertaining to the construction, improvement, maintenance and supervision of highways in such county shall be transferred to such district or county superintendent.

**§ 353. Pending actions or proceedings.**—This chapter shall not affect pending actions or proceedings, civil or criminal, pertaining to the construction, improvement, maintenance, supervision or control of highways and bridges, brought by or against the state engineer, or county engineer or a county superintendent of highways, or a commissioner of highways, under the provisions of any statute hereby repealed, but the same may be prosecuted or defended in the same manner by the commission or by the officer having jurisdiction in respect thereto. Any investigation, examination or proceeding undertaken, commenced or instituted by the state engineer, county engineer or highway commissioner or either of them relating to highways or bridges may be conducted or continued to a final determination by the proper officer hereunder, in the same manner, and under the same terms and conditions, and with the same effect as though this chapter had not been passed.

**§ 354. Saving clause.**—The repeal of a law, or any part of it specified in the annexed schedule shall not affect or impair any contract, or any act done, or right accruing, accrued or acquired or any penalty, forfeiture, or punishment incurred prior to the time when this chapter or any section thereof takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent, as if such laws had not been repealed. The provisions of this chapter shall not affect or impair any act done or right accruing, accrued or acquired under or in pursuance of any resolution adopted by the board of supervisors of a county, on or before the thirty-first day of December, nineteen hundred and eight, requesting the construction or improvement of a highway therein, as provided in chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof, or under or in pursuance of any resolution adopted on or before

such date by a board of supervisors, under such act and the acts amendatory thereof, providing for the construction or improvement of a highway in a county in accordance with maps, plans and specifications submitted to such board by the state engineer, or under or in pursuance of any contract for the construction or improvement of a highway, awarded as provided in such chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. All further proceedings in respect to such highway shall be taken in accordance with the provisions of this chapter.

**§ 355. County highway maps preserved.**—The county highways to be selected by the commission for construction or improvement, as provided in this chapter, shall be the highways in the respective counties designated upon the map of the highways of the state, prepared by the state engineer as provided by law, and approved by the legislature by chapter seven hundred and fifteen of the laws of nineteen hundred and seven; except the highways on such map which have been designated and described as state highways by section one hundred and twenty of this chapter. Such map shall remain in full force and effect notwithstanding the repeal of such chapter seven hundred and fifteen of the laws of nineteen hundred and seven by this chapter; except that the board of supervisors of any county is hereby authorized to modify the designation of county highways on such map by resolution duly adopted by a majority vote of the members of such board, provided the total mileage as originally designated upon the county map in such county is not thereby materially increased. A certified copy of such resolution shall be transmitted to the commission, or to the state engineer if the same be adopted prior to the appointment and qualifications of the commission.

**§ 356. Construction.**—Wherever the term state engineer shall occur in any law, contract or document such term shall be deemed to refer to the state commission of highways as established by this chapter so far as such law, contract or document pertains to matters which are within the jurisdiction of such commission of highways. Wherever the term county engineer or county superintendent of highways is used in any such law, contract or document such term shall be deemed to refer to and include the county or district superintendent having jurisdiction of the matter contained in such law, contract or document.

The provisions of this chapter so far as they are substantially the same as those existing at the time they shall take effect, shall

be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new elements. References in laws not repealed to provisions of law incorporated in this chapter and repealed, shall be construed as applying to the provisions so incorporated.

**§ 357. When to take effect.**—This chapter shall take effect the first day of January, nineteen hundred and nine, except as to the provisions specified as follows:

1. The provisions of sections forty-three, ninety, ninety-one, ninety-four, ninety-five, ninety-nine, and one hundred, relating to highway commissioners, estimates of expenditures, duties of town board in respect thereto, levy of taxes, the limitation of amounts to be raised, submission of propositions at town meetings, assessments of village property and statements by the clerk of the board of supervisors to the comptroller, shall take effect immediately.

2. The provisions of sections one hundred and thirty and one hundred and thirty-one of this chapter, pertaining to the award of contracts for the construction of county highways shall take effect immediately and shall apply to contracts to be awarded under chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof, prior to January first, nineteen hundred and nine; and until the commission shall have been appointed and have duly qualified, the state engineer and surveyor shall exercise the powers and perform the duties conferred upon the said commission by the foregoing sections.

3. The provisions of section one hundred and seventy-nine, relating to the sprinkling of state and county highways and the removal of refuse therefrom; the provisions of section two hundred and eighty, relating to the construction or improvement of highways at the joint expense of a county and town, and the provisions of section three hundred and fifteen relating to the modification of maps by boards of supervisors and the provisions of this section shall take effect immediately.

**L. 1913, ch. 80. § 18. Saving clause.**—The state commission of highways shall continue as now constituted until the appointment and qualification of the commissioner of highways, pursuant to the highway law as hereby amended, and thereupon the term of office of the state superintendent of highways shall expire, and the superintendent of public works and state engineer shall cease to be members of such commission and all their powers and duties in respect to highways shall terminate; and thereupon the state com-

mission of highways as constituted in pursuance of the highway law as amended by this act shall be deemed and held to constitute a continuation of the state commission of highways as now constituted and not as a new commission for the purpose of succession to all the rights, powers, duties and obligations of the state commission of highways as now constituted, except as modified by this act, with the same force and effect as if such modifications were made without any change in the membership of the present commission; and the present commission as now constituted, and the commission to be constituted in pursuance of the highway law as amended by this act, shall be deemed and held to be one continuing commission notwithstanding the changes in the membership thereof. The division engineers in office when this act takes effect shall continue in office as six of the division engineers, in pursuance of the highway law as hereby amended, in charge of the divisions to which they may be respectively assigned by the commissioner of highways. This act shall make no changes in any of the civil service positions under the highway law, and the present deputies, division engineers, resident engineers, division superintendents, clerks, officers and employees of the state commission of highways, shall continue in their respective offices and employments until the appointment and qualification of their successors in pursuance of the highway law as amended by this act, and in pursuance of the civil service law.

**L. 1913, ch. 80.—§ 19. When to take effect.**—This act shall take effect immediately.

#### BOND ISSUE TO BE VOTED UPON AT THE GENERAL ELECTION.

**Section 1. Bonds authorized.** There shall be issued, in the manner and at the times hereinafter recited, bonds of the state in an amount not to exceed fifty million dollars, which bonds shall be sold by the state and the proceeds thereof paid into the state treasury, and so much thereof as shall be necessary expended for the purpose of constructing and improving the state and county highways as defined in the highway law. Said bonds when issued shall be exempt from taxation.

**§ 2. Sale; interest; tax to pay; sinking fund.** The comptroller is hereby directed to cause to be prepared the bonds of this state to an amount not to exceed fifty million dollars, said bonds to bear interest at the rate of not to exceed four per centum per annum, which interest shall be payable semi-annually in the city

of New York. Said bonds shall be issued for a term of fifty years from their respective dates of issue, and shall be sold for not less than par. The comptroller is hereby charged with the duty of selling said bonds to the highest bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the city of New York and one in the city of Albany. Advertisements shall contain a provision to the effect that the comptroller, in his discretion, may reject any or all bids made in pursuance of said advertisements, and, in the event of such rejection, the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. Said bonds shall be sold in such lots and at such times as may be required for the purpose of making partial or final payments on work contracted for in accordance with the provisions of this act, and for other payments lawfully to be made under the provisions thereof. There is hereby imposed a direct annual tax to pay and sufficient to pay the interest on each bond issued under this act as it falls due, and to pay and sufficient to pay and discharge the principal of each of such bonds within fifty years from the date thereof. The rate of such annual tax shall be five one-thousandths of a mill on each dollar of valuation of real and personal property in this state subject to taxation, for each and every one million dollars, or fraction thereof, in par value of said bonds issued under this act, and outstanding or to be outstanding during the fiscal year during which the amount of such tax is computed. The tax imposed, as herein provided, shall be assessed, levied and collected in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of the state. The proceeds of such tax shall be invested by the comptroller in securities in which he is authorized by law to invest the trust and sinking funds of the state, and together with the interest arising therefrom, any premiums received on the sale of said bonds, and interest accruing on deposits of money received from the sale of said bonds or from miscellaneous sources shall constitute a sinking fund which is hereby created. Said fund shall be used solely for the purpose of paying the principal and interest of bonds issued in accordance with the provisions of this act.

**§ 3. Moneys divided between state and county highways.** The sum of twenty million dollars of the moneys hereby authorized to be raised shall be used solely for the construction and improve-

ment of state highways as defined by section three of the highway law, and the sum of thirty million dollars of the aforesaid moneys shall be used solely for the construction and improvement of county highways as defined by section three of the highway law.

**§ 4. Apportionment of moneys.** The state commission of highways is hereby directed, immediately after this law shall take effect, to equitably apportion among the counties containing towns the total amount of money hereby authorized. Said apportionment for each of said counties shall be computed on the following basis: On the population as fixed by the federal census of nineteen hundred and ten; on the aforesaid measured mileage of public highways outside of cities and villages as obtained pursuant to section sixty-nine of chapter thirty of the laws of nineteen hundred and nine, and on the total area; and the sum of one-third of each of these three factors thus obtained for each of said counties shall constitute such equitable apportionment.

**§ 5. Routes of state highways.** The routes of the state highways to be constructed and improved hereunder are those specifically set forth and described in section one hundred and twenty of the highway law, being chapter thirty of the laws of nineteen hundred and nine, and the acts amendatory thereof and supplemental thereto.

**§ 6. Routes of county highways.** The routes of county highways to be constructed and improved hereunder are such as shall be determined by the state commission of highways with the approval of the boards of supervisors of the respective counties as set forth and prescribed by the highway law.

**§ 7. Control of construction.** The work of construction and improvement of the aforesaid highways shall be under the management, supervision and control of the state commission of highways, and the provisions of articles six and seven of chapter thirty of the laws of nineteen hundred and nine, known as the highway law and the acts amendatory thereof and supplemental thereto, so far as they may be applicable and not inconsistent herewith, shall apply to and govern the work authorized by this act. The maps, plans, routes, specifications, resolutions and acts heretofore prepared or adopted for use in the improvement and construction of state and county highways shall be applicable to the work authorized under this act.

**§ 8. Surplus.** Any surplus arising from the sale of bonds over and above the cost of the work herein provided for shall be applied to the sinking fund for the payment of said bonds.

§ 9. **Submission of law to people.** This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted to the people of this state at the general election to be held in November, nineteen hundred and twelve. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: "Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and twelve, entitled 'An act making provision for issuing bonds to the amount of not to exceed fifty million dollars for the purpose of constructing and improving state and county highways, and providing for a submission of the same to the people to be voted upon at the next general election to be held in the year nineteen hundred and twelve,' be approved?"

L. 1912, ch. 298.

See opinion of Attorney-General May 8, 1912.

#### APPROPRIATIONS EXPEDITING THE BUILDING OF CERTAIN STATE ROUTES.

Section 1. The sum of one million dollars (\$1,000,000), to become available on the first day of October, nineteen hundred and ten, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended for the construction and improvement of portions of state routes numbers two and six, as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, so as to complete the connections between stone roads already built and those to be built under the equitable apportionment in nineteen hundred and ten and eleven, as defined by the highway law. No county in which roads are improved under this chapter shall participate in the annual distribution of funds for the improvement of state routes until such time as the counties not participating in the fund provided by this chapter shall have received such amount of improvement as will equalize the mileage.

L. 1910, ch. 532.

Section 1. The sum of four hundred fifty-nine thousand ninety-four dollars and seven cents (\$459,094.07), being the unexpended balance of the appropriation made by chapter five hundred and thirty-two of the laws of nineteen hundred and ten, to be expended for the construction and improvement of portions of state routes numbers two and six as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, so as to complete the connections between stone roads already built and those to be built under the equitable apportionment in nineteen hundred and ten and nineteen hundred and eleven, as defined by the highway law, is hereby reappropriated from the same funds and for the purpose of the construction or improvement of public highways in accordance with the provision of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

Added by L. 1913, ch. 360.

Section 1. The sum of one million dollars (\$1,000,000) to become available immediately is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, and the laws amendatory thereof. The moneys hereby appropriated shall be expended in accordance with the provisions of article six of the highway law, for the construction and improvement of portions of state routes numbers four and twelve commencing at a point on route number four, on the dividing line between the counties of Broome and Tioga; running thence westerly through the southern portions of Tioga and Chemung counties to Elmira; running thence northerly from the city of Elmira to a point at or near Horseheads, being the intersection of route number twelve with route number four; running thence northerly on route number twelve through the counties of Schuyler and Yates, by the way of Watkins, to a point on route number six, being the intersection of route number twelve and route number six, as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, so as to complete the connection between state highways already built on the aforesaid routes. And providing the whole of the aforesaid amount is not necessary to complete the aforesaid routes, then the amount unexpended shall be used for

the construction and improvement of state route number thirty-six, commencing at a point on said state route number thirty-six, at or near Owego and running in a northerly direction to a point on the dividing line between Tioga and Tompkins counties. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 92.

Section 1. The sum of one million and five hundred thousand dollars (\$1,500,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction and improvement of that part of state route number twenty-five from Long Lake to Riparius, as defined by section one hundred and twenty of said highway law, and also that part of route number twenty-five from Lake George to Chestertown, and on route number twenty-two from Whitehall to Cambridge; also on that portion of route twenty-two in Essex county north of Schroon Lake, defined by said section of the highway law, not already constructed or for which moneys are not already provided; also on that portion of route twenty-two, as defined by said section of the highway law, and herein defined, in Clinton county beginning at or near Ausable Chasm and running thence northeasterly through Clinton or Essex county or partly through each of said counties to the Lake Shore road in Clinton county, thence northerly along said Lake Shore road to Plattsburgh; thence northerly on the Lake Shore road or state road to Chazy and the Canada line at Rouses Point. In case the state road or roads in this bill provided for exceed in mileage in or for any county herein mentioned the equitable portion to which said county is or may be legally entitled, then only so much mileage in said county shall be improved or constructed as shall be the fair and equitable portion of said route to which said county is entitled and in such case the portion or portions of the route or routes in such county which shall be improved or con-

structed shall be such portion or portions as in the judgment of the highway commission are in most need of improvement or construction; and in case the appropriation hereby made shall be insufficient to complete said state route or routes as contemplated and herein defined, then the highway commission shall expend the same in constructing and improving such portions of said route or routes as in its judgment are in most need of construction and improvement, except that each county shall receive and have expended therein its equitable and fair portion of said appropriation in proportion to the mileage of state road or roads to which each said county is or may be entitled on the route or routes as herein defined and provided. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 133.

Section 1. The unexpended balances of moneys appropriated by chapter one hundred and thirty-three of the laws of nineteen hundred and eleven, for the construction and improvement of certain state routes as then existing, or the just proportion thereof available for the construction or improvement of such routes within the counties of Essex and Warren, are hereby reappropriated for the construction and improvement of any new state routes created or to be created within the counties of Essex and Warren by act of the legislature at the session of nineteen hundred and thirteen, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven; such moneys to be applied to the several new routes in such counties in such manner and in such proportions as the state commission of highways may determine, excepting that as between the two counties the apportionment shall be on a fair and equitable basis, computed according to the relative mileage of such new routes in both counties. The moneys hereby reappropriated shall be expended according to the provisions of article six of the highway law.

Added by L. 1913, ch. 786.

ticipate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

*Added by L. 1911, ch. 135.*

Section 1. The sum of one million, two hundred thousand dollars (\$1,200,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven; the money hereby appropriated to be expended, in the manner provided by article six of the highway law, for the construction and improvement of the unimproved portion of state route number four, as defined by chapter thirty of the laws of nineteen hundred and nine as follows: Commencing at a point to be determined by the commission on route number three, running thence through Orange county by the way of Middletown to a point to be determined by the commission, on the dividing line between Sullivan and Orange counties, running thence westerly and northerly through Sullivan county by the way of Monticello to a point to be determined by the commission, on the dividing line between Delaware and Sullivan counties, thence to Deposit, on the dividing line between Broome and Delaware counties, running thence westerly by the way of Windsor to the city of Binghamton; thereby completing a continuous improved highway from the city of Binghamton to the said point on route number three in Orange county to be so determined by the highway commission; but in case the appropriation hereby made shall be insufficient to complete said system of stone road as contemplated, then the highway commission shall expend the same in constructing and improving such portions of said road as in its judgment are in most need of construction and improvement. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

*Added by L. 1911, ch. 136.*

Section 1. The sum of one million dollars (\$1,000,000), to become available immediately, or so much thereof as may be neces-

ticipate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 135.

Section 1. The sum of one million, two hundred thousand dollars (\$1,200,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven; the money hereby appropriated to be expended, in the manner provided by article six of the highway law, for the construction and improvement of the unimproved portion of state route number four, as defined by chapter thirty of the laws of nineteen hundred and nine as follows: Commencing at a point to be determined by the commission on route number three, running thence through Orange county by the way of Middletown to a point to be determined by the commission, on the dividing line between Sullivan and Orange counties, running thence westerly and northerly through Sullivan county by the way of Monticello to a point to be determined by the commission, on the dividing line between Delaware and Sullivan counties, thence to Deposit, on the dividing line between Broome and Delaware counties, running thence westerly by the way of Windsor to the city of Binghamton; thereby completing a continuous improved highway from the city of Binghamton to the said point on route number three in Orange county to be so determined by the highway commission; but in case the appropriation hereby made shall be insufficient to complete said system of stone road as contemplated, then the highway commission shall expend the same in constructing and improving such portions of said road as in its judgment are in most need of construction and improvement. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 136.

Section 1. The sum of one million dollars (\$1,000,000), to become available immediately, or so much thereof as may be neces-

sary, is hereby appropriated, payable out of moneys realized from the sale of bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended for the construction and improvement of portions of state routes numbers eighteen and thirty in the counties of Niagara and Orleans, as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine in such manner as to complete a system of improved roads, beginning at the easterly city line of Niagara Falls and from thence following route eighteen south-easterly to the Niagara county line, and from the easterly city line of Niagara Falls following route thirty easterly to a point to be determined on the dividing line between Orleans and Monroe counties, and from the northerly city line of Niagara Falls following route eighteen by the way of Lewiston to a point near the mouth of the Niagara river, Niagara county.

§ 2. The state highway commission shall promptly, upon such money becoming available, complete maps, plans, specifications and estimates for the construction and improvement of said portions of such routes, and cause the same to be constructed and improved by November first, nineteen hundred and thirteen.

Added by L. 1911, ch. 154.

Amended by L. 1912, ch. 325.

Section 1. The unexpended balances of moneys appropriated by chapter one hundred and fifty-four of the laws of nineteen hundred and eleven, for the construction and improvement of certain state routes as then existing, or the just proportion thereof available for the construction or improvement of such routes within the counties of Niagara and Orleans, are hereby reappropriated for the construction and improvement of any additions or spurs to state route number thirty created or to be created within the counties of Niagara and Orleans by act of the legislature at the session of nineteen hundred and fourteen, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven; such moneys to be applied to the several new routes in such counties in such manner and in such proportions as the state commission of highways may determine, excepting that as between the two

counties the apportionment shall be on a fair and equitable basis, computed according to the relative road mileage population and area in both counties. The moneys hereby reappropriated shall be expended according to the provisions of article six of the highway law.

Added by L. 1914, ch. 275.

Section 1. The sum of one hundred and ten thousand dollars (\$110,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. Sixty thousand dollars of such money, or so much thereof as may be necessary, shall be expended according to the provisions of article six of the highway law for the construction and improvement of that part of state route number five, as defined by section one hundred and twenty of the highway law, commencing at the city of Kingston, and running thence to a point on the boulevard to be erected by the city of New York near the present village of West Hurley, and fifty thousand dollars of such money, or so much thereof as may be necessary, shall be so expended for the construction and improvement of that part of route number three as defined by section one hundred and twenty of the highway law, commencing at the village of Saugerties and running thence northerly to the Greene county line. A county in which a road so improved is situated shall not participate in the future annual appropriation of funds for the improvement of state roads, until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 155.

Section 1. The sum of five hundred thousand dollars (\$500,000), to be available immediately,\* is hereby appropriated payable out of the money realized from the funds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to

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\* So in original.

the provisions of article six of the highway law for the construction of that part of state route four, as defined by section one hundred and twenty of the highway law, which extends from the city of Hornell in the county of Steuben to the city of Olean in the county of Cattaraugus. No county in which roads are improved under this chapter shall participate in the future annual appropriations of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 348.

Section 1. The sum of seven hundred thousand dollars (\$700,000) is hereby appropriated, to become available immediately, payable out of money realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended in the manner provided by article six of the highway law for the construction and improvement of the unimproved portions of state route number five, being that part which extends between Pine Hill and Oneonta, as such route is defined by section one hundred and twenty of the highway law, thereby completing a continuous improved road from the city of Kingston to the city of Oneonta. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 426.

Section 1. The sum of one million one hundred thousand dollars (\$1,100,000), is hereby appropriated to become available immediately, payable out of money realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated to be expended, in the manner provided by article six of the highway law, for the construction and improvement of state route numbers twenty-five and twenty-seven, as defined by chapter thirty of the laws of nineteen hundred and nine, as follows: Beginning at

Trenton in the county of Oneida at the terminus of the county highway leading from Utica to Trenton, thence northerly along the said route twenty-five to Alder Creek, thence northerly over route twenty-seven to Boonville, Lowville, Carthage, Watertown, Clayton, Alexandria Bay and the Thousand Islands.

Added by L. 1911, ch. 463.

Section 1. The sum of three hundred and eighty thousand dollars (\$380,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, to be expended according to the provisions of article six of the highway law, for completing the construction and improvement of the following portions of route number one as defined by section one hundred and twenty of the highway law: From the village of Brewster in the county of Putnam northerly to Akins Corners; from the line between the towns of Pawling and Dover in the county of Dutchess northerly through the towns of Dover and Amenia, so as to connect with county highway number five hundred and thirty-seven; and from the Copake Iron Works to Hillsdale in Columbia county. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads, until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 467.

Section 1. The sum of six hundred thousand dollars (\$600,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction and improvement of that part of state route number thirty in Saint Lawrence county as defined by section one hundred and twenty of said highway law. No county in which roads are improved under this chapter shall participate in the future annual

appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 496.

Section 1. The sum of eight hundred and fifty thousand dollars (\$850,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction of a stone road upon and for the improvement of that part of state route number four, as defined by section one hundred and twenty of the highway law, which extends from between a point at or near Addison, to be determined by the commission, and Hornell, and that part of state route number fifteen, as defined by said section of the highway law, which extends from Hornell to Dansville, and that part of state route number fourteen which extends from the hamlet of Campbell to Avoca. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 559.

§ 2. The sum of two hundred and ten thousand dollars (\$210,000), to become available immediately, is hereby appropriated, payable out of money realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, and as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended in accordance with the provisions of article six of the highway law for the construction and improvement of state routes forty-two, twenty-one and twenty-two in Rensselaer county as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, as amended by this act. This appropriation to be equally divided among the three routes in Rensselaer county named herein. No county in which roads are

improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 614.

Section 1. The sum of seven hundred and fifty thousand dollars (\$750,000) is hereby appropriated to become available immediately, payable out of money realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended, in the manner provided by article six of the highway law, for the construction and improvement of the unimproved portions of state routes numbers one and two in the county of Westchester, as defined by section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, as amended.

No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 657.

Section 1. The sum of three hundred and eighty thousand dollars (\$380,000), to become available immediately, is hereby appropriated payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction and improvement of that part of state route number six, as defined in section one hundred and twenty of the highway law, which extends between Lima and Caledonia and for the construction and improvement of state route number forty-three, as defined in section one hundred and twenty of the highway law and as added thereto by chapter one hundred and sixty-six of the laws of nineteen hundred and eleven. No county

in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 715.

Section 1. The sum of one hundred and sixty-five thousand dollars (\$165,000), to become available immediately, is hereby appropriated, payable out of moneys realized from the bond issue in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction and improvement of uncompleted portions of state route number forty-three as defined by section one hundred and twenty of the highway law. No county in which roads are improved shall participate in future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 726.

Section 1. The sum of eight hundred thousand dollars (\$800,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated shall be expended according to the provisions of article six of the highway law for the construction and improvement of that part of state route number four, as defined in section one hundred and twenty of the highway law, which extends from Olean to Westfield. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 733.

Section 1. The sum of five hundred and seventy-five thousand dollars (\$575,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended by the state highway commission, in such manner as to complete a system of improved stone roads in and along the following routes and parts of routes, to wit: route twenty-eight, in Oswego county, from its intersection with route thirty-three to its intersection with route thirty; route thirty, from its intersection with route twenty-eight, in the county of Oswego, to the city of Watertown, in the county of Jefferson; all of route thirty-three, being in the counties of Onondaga and Oswego, as provided in article six of the highway law, except the portion of such route from the southerly bounds of the village of Cicero to the city of Syracuse; all of route ten in the county of Onondaga.

§ 2. No county in which roads are improved under this chapter shall participate in the annual distribution of funds for the improvement of state routes until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Amended by L. 1912, ch. 439.

Section 1. The sum of two hundred and fifty thousand dollars (\$250,000), to be available immediately, is hereby appropriated, payable out of moneys realized from the sale of bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended in accordance with the provisions of article six of the highway law for the construction and improvement of that portion of state route number three which extends through the county of Greene, beginning on the dividing line between the counties of Ulster and Greene and running northerly to the dividing line between the counties of Greene and Albany. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds pro-

vided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 742.

Section 1. The sum of four hundred and fifty thousand dollars (\$450,000), to become available immediately, is hereby appropriated, payable out of moneys realized from bonds, issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended by the state highway commission, in such manner as to complete a system of improved stone roads in and along the whole of route thirty-four being in the counties of Oswego and Onondaga, as provided in article six of the highway law.

§ 2. No county in which roads are improved under this chapter shall participate in the annual distribution of funds for the improvement of state routes until such times as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 743.

Section 1. The sum of two hundred thousand dollars (\$200,000) is hereby appropriated, to become available immediately, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The money hereby appropriated is to be expended, by the state highway commission, for the construction and improvement of that portion of state route number nine, extending between the village of Cazenovia and state route number eight at or near Bouckville, being a section of such route about sixteen miles in length which passes the state school of agriculture at Morrisville, as provided by article six of the highway law. No county in which roads are improved under this chapter shall participate in the future annual appropriation of funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 753.

Section 1. The sum of one hundred and ten thousand dollars (\$110,000), to be available immediately, is hereby appropriated, payable out of moneys realized from the sale of bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended in accordance with the provisions of article six of the highway law for the construction and improvement of state route number forty-one, as described in and added to section one hundred and twenty of the highway law by chapter three hundred and ninety-five of the laws of nineteen hundred and eleven. No county in which roads are improved under this chapter shall participate in the future annual appropriation funds for the improvement of state roads until such time as the counties not participating in the funds provided by this chapter shall have received such amount of improvement as will equalize the mileage.

Added by L. 1911, ch. 754.

Section 1. The sum of eight hundred fifty-six thousand one hundred twenty-eight dollars and one cent (\$856,128.01), being the unexpended balance of the appropriation made by chapter ninety-two of the laws of nineteen hundred and eleven;

And the sum of one million twenty-five thousand two hundred seventy-eight dollars and thirty-six cents (\$1,025,278.36), being the unexpended balance of the appropriation made by chapter one hundred and thirty-three of the laws of nineteen hundred and eleven;

And the sum of four hundred eighty-two thousand five hundred ninety-five dollars and sixty-eight cents (\$482,595.68), being the unexpended balance of the appropriation made by chapter one hundred and thirty-four of the laws of nineteen hundred and eleven;

And the sum of four hundred ninety-two thousand nine hundred fifty-seven dollars and seventy cents (\$492,957.70), being the unexpended balance of the appropriation made by chapter one hundred and thirty-five of the laws of nineteen hundred and eleven;

And the sum of one million twenty-four thousand thirty-nine dollars and two cents (\$1,024,039.02), being the unexpended balance of the appropriation made by chapter one hundred and thirty-six of the laws of nineteen hundred and eleven;

And the sum of eight hundred seventy thousand eight hundred forty dollars and seventeen cents (\$870,840.17), being the unexpended balance of the appropriation made by chapter one hundred and fifty-four of the laws of nineteen hundred and eleven;

And the sum of forty thousand five hundred thirty-eight dollars and forty-eight cents (\$40,538.48), being the unexpended balance of the appropriation made by chapter one hundred and fifty-five of the laws of nineteen hundred and eleven;

And the sum of four hundred seventy-seven thousand ten dollars and fifty cents (\$477,010.50), being the unexpended balance of the appropriation made by chapter three hundred and forty-eight of the laws of nineteen hundred and eleven;

And the sum of six hundred eighty-six thousand eight hundred seven dollars and thirty-two cents (\$686,807.32), being the unexpended balance of the appropriation made by chapter four hundred and twenty-six of the laws of nineteen hundred and eleven;

And the sum of nine hundred ninety-four thousand three hundred fifty-four dollars and eighty-nine cents (\$994,354.89), being the unexpended balance of the appropriation made by chapter four hundred and sixty-three of the laws of nineteen hundred and eleven;

And the sum of two hundred forty-four thousand one hundred twenty-two dollars and forty-one cents (\$244,122.41), being the unexpended balance of the appropriation made by chapter four hundred and sixty-seven of the laws of nineteen hundred and eleven;

And the sum of five hundred sixty thousand five hundred thirty dollars and sixty-seven cents (\$560,530.67), being the unexpended balance of the appropriation made by chapter four hundred and ninety-six of the laws of nineteen hundred and eleven;

And the sum of six hundred fifty-two thousand three hundred thirty-nine dollars and forty-four cents (\$652,339.44), being the unexpended balance of the appropriation made by chapter five hundred and fifty-nine of the laws of nineteen hundred and eleven;

And the sum of one hundred twenty-three thousand eight hundred twenty-eight dollars and sixty-nine cents (\$123,828.69), being the unexpended balance of the appropriation made by chapter six hundred and fourteen of the laws of nineteen hundred and eleven;

And the sum of six hundred seventy-five thousand five hundred eighty-eight dollars and two cents (\$675,588.02), being the unexpended balance of the appropriation made by chapter six hundred and fifty-seven of the laws of nineteen hundred and eleven;

And the sum of three hundred one thousand forty-five dollars and forty-eight cents (\$301,045.48), being the unexpended balance of the appropriation made by chapter seven hundred and fifteen of the laws of nineteen hundred and eleven;

And the sum of sixty thousand two hundred sixty-seven dollars and seventy-two cents (\$60,267.72), being the unexpended balance of the appropriation made by chapter seven hundred and twenty-six of the laws of nineteen hundred and eleven;

And the sum of seven hundred seventy-eight thousand six hundred thirty-seven dollars and five cents (\$778,637.05), being the unexpended balance of the appropriation made by chapter seven hundred and thirty-three of the laws of nineteen hundred and eleven;

And the sum of three hundred eighty-three thousand three hundred ninety-one dollars and sixty-seven cents (\$383,391.67), being the unexpended balance of the appropriation made by chapter seven hundred and forty-one of the laws of nineteen hundred and eleven;

And the sum of two hundred thousand five hundred ninety-five dollars and fifty-six cents (\$200,595.56), being the unexpended balance of the appropriation made by chapter seven hundred and forty-two of the laws of nineteen hundred and eleven;

And the sum of three hundred fifty-three thousand two hundred ten dollars and forty-eight cents (\$353,210.48), being the unexpended balance of the appropriation made by chapter seven hundred and forty-three of the laws of nineteen hundred and eleven;

And the sum of one hundred eighty-nine thousand ninety-five dollars and eighty-six cents (\$189,095.86), being the unexpended balance of the appropriation made by chapter seven hundred and fifty-three of the laws of nineteen hundred and eleven;

And the sum of ninety-three thousand seven hundred twenty dollars and fifty-three cents (\$93,720.53), being the unexpended balance of the appropriation made by chapter seven hundred and fifty-four of the laws of nineteen hundred and eleven;

To be expended in carrying out the purpose of the acts for the construction and improvement of portions of state routes designated therein within the several counties of the state, is hereby reappropriated from the same fund and for the same purpose as provided in said acts.

Added by L. 1913, ch. 362.

Section 1. The sums appropriated by chapters ninety-two, one hundred and thirty-five, one hundred and fifty-four, one hundred and fifty-five, three hundred and forty-eight, four hundred and twenty-six, four hundred and sixty-three, four hundred and sixty-seven, four hundred and ninety-six, five hundred and fifty-nine, six hundred and fifty-seven, seven hundred and fifteen, seven hundred and twenty-six, seven hundred and thirty-three, seven hundred and forty-one, seven hundred and forty-two, seven hundred and forty-three, seven hundred and fifty-three and seven hundred and fifty-four of the laws of nineteen hundred and eleven for the construction and improvement of all or portions of state routes as specified or described therein, which appropriations have been ascertained by the state commission of highways to be insufficient for the completion of the said state routes or portions thereof as contemplated by said acts, are hereby authorized to be expended by the said commission in the construction and improvement of such portions of the state routes or portions thereof so specified in such acts as in the judgment of the said commission are in most need of construction and improvement. The appropriations so made shall be expended by the commission according to the provisions of article six of the highway law.

Added by L. 1913, ch. 768.

#### APPROPRIATIONS FOR THE CONSTRUCTION OR IMPROVEMENT OF HIGHWAYS.

Section 1. The sum of two million dollars (\$2,000,000), to be immediately available, and the further sum of eight million dollars (\$8,000,000), to become available on the first day of October, nineteen hundred and ten, are hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended for the construc-

tion or improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1910, 209.

Section 1. The sum of four million three hundred and thirty-four thousand seventy-one dollars and twenty-four cents (\$4,334,071.24), being the unexpended balance of an appropriation made by chapter two hundred and nine of the laws of nineteen hundred and ten for the construction or improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby reappropriated from the same funds and for the same purpose as provided by said act and the amendments thereto.

L. 1912, ch. 496.

Section 1. The sum of eight million dollars (\$8,000,000) to become available on the first day of October, nineteen hundred and eleven, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended for the construction or improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1911, ch. 750.

Section 1. The sum of six million six hundred thousand eight hundred nine dollars and three cents (\$6,600,809.03), being the unexpended balance of the appropriation made by chapter seven hundred and fifty of the laws of nineteen hundred and eleven, to be expended for the construction or improvement of public highways in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1913, ch. 359.

Section 1. The sum of one million, forty-five thousand dollars (\$1,045,000), to become available on the first day of October, nineteen hundred and twelve, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended for the construction or improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1912, ch. 247.

Section 1. The sum of one million forty-five thousand dollars (\$1,045,000), being the unexpended balance of the appropriation made by chapter two hundred forty-seven of the laws of nineteen hundred twelve, to be expended for the construction and improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1914, ch. 526.

Section 1. The sum of five million dollars (\$5,000,000) to become available immediately is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve. The moneys hereby appropriated shall be expended for the construction and improvement of public highways in accordance with the provisions of article six, chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," and the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve.

L. 1913, ch. 647.

Section 1. The sum of ten million dollars (\$10,000,000), five million (\$5,000,000) to become available immediately, and five million (\$5,000,000) to become available on the first day of October, nineteen hundred and fourteen, is hereby appropriated payable out of moneys realized from bonds issued in accordance with

"or improvement of public highways in accordance with the provisions of section one thousand four hundred and six of the laws of nineteen hundred and nine or that an act relating to highways, constituting chapter twenty-eight of the laws of nineteen hundred and nine."

"The sum of two thousand three hundred and thirty-five thousand seven hundred and twenty-four dollars (\$4,335) to be used for the construction, maintenance or improvement made necessary by reason of the laws of nineteen hundred and nine or the construction or improvement of public highways, constituting chapter twenty-eight of the laws of nineteen hundred and nine." An act relating to highways, constituting chapter twenty-nine of the laws of nineteen hundred and nine, passed and approved from the same funds as were appropriated in the act of said law and the amendment thereto.

"The sum of two million dollars (\$2,000,000) to be used for the construction, maintenance or improvement made necessary by reason of the laws of nineteen hundred and nine or the construction or improvement of public highways, constituting chapter twenty-nine of the laws of nineteen hundred and nine." An act relating to highways, constituting chapter twenty-nine of the laws of nineteen hundred and nine, passed and approved from the same funds as were appropriated in the act of said law and the amendment thereto.

"The sum of one million five hundred thousand dollars (\$1,500,000) to be used for the construction, maintenance or improvement made necessary by reason of the laws of nineteen hundred and nine or the construction or improvement of public highways, constituting chapter twenty-nine of the laws of nineteen hundred and nine." An act relating to highways, constituting chapter twenty-nine of the laws of nineteen hundred and nine, passed and approved from the same funds as were appropriated in the act of said law and the amendment thereto.

**Section 1.** The sum of one million, forty-five thousand dollars (\$1,045,000), to become available on the first day of October, nineteen hundred and twelve, is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven. The moneys hereby appropriated shall be expended for the construction or improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1912, ch. 247.

**Section 1.** The sum of one million forty-five thousand dollars (\$1,045,000), being the unexpended balance of the appropriation made by chapter two hundred forty-seven of the laws of nineteen hundred twelve, to be expended for the construction and improvement of public highways, in accordance with the provisions of article six of chapter thirty of the laws of nineteen hundred nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1914, ch. 526.

**Section 1.** The sum of five million dollars (\$5,000,000) to become available immediately is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve. The moneys hereby appropriated shall be expended for the construction and improvement of public highways in accordance with the provisions of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," and the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve.

L. 1914, ch. 547.

**Section 1.** The sum of five million dollars (\$5,000,000), the sum of three million dollars (\$3,000,000), the sum of two million dollars (\$2,000,000), the sum of one million dollars (\$1,000,000), and the sum of one thousand dollars (\$1,000) is hereby appropriated, payable out of moneys realized from bonds issued in accordance with the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve.

the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve. The moneys hereby appropriated shall be expended for the construction and improvement of public highways in accordance with the provisions of article six, chapter 30 of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," and the provisions of chapter two hundred and ninety-eight of the laws of nineteen hundred and twelve.

L. 1914, ch. 516.

#### APPROPRIATIONS FOR THE MAINTENANCE AND REPAIR OF IMPROVED HIGHWAYS.

Section 1. The sum of one million nine hundred eighty-three thousand, one hundred twenty-four dollars and sixty-nine cents (\$1,983,124.69), together with the further sum of five hundred thirty-six thousand, two hundred seventy-four dollars and thirty-one cents (\$536,274.31), being the amount paid into the treasury down to but not including the first day of February, nineteen hundred and twelve, pursuant to the provisions of article eleven of chapter thirty of the laws of nineteen hundred and nine, as amended by chapter three hundred seventy-four of the laws of nineteen hundred and ten and chapter four hundred ninety-one of the laws of nineteen hundred and eleven, and all acts supplemental thereto and amendatory thereof, making a total sum of two million, five hundred nineteen thousand, three hundred ninety-nine dollars (\$2,519,399), or so much thereof as may be needed, is hereby appropriated out of any money in the treasury, not otherwise appropriated, payable in installments by the state treasurer upon the warrant of the comptroller, upon the certificate of the state commission of highways, for the purpose of carrying out the provisions of article seven of chapter thirty of the laws of nineteen hundred and nine and all acts supplemental thereto and amendatory thereof, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," in regard to the maintenance and repair of public highways which have been or may hereafter be improved or constructed by state aid.

L. 1912, ch. 44.

Section 1. The sum of eighteen thousand five hundred fifty-two dollars and thirty-four cents (\$18,552.34), being the unexpended balance of the appropriation made by chapter forty-four

of the laws of nineteen hundred and twelve, to be expended for the maintenance and repair of improved highways, is hereby re-appropriated from the same funds and for the same purpose of the maintenance and repair of improved highways, in accordance with the provisions of article seven of chapter thirty of the laws of nineteen hundred and nine, and all acts supplemental thereto and amendatory thereof, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," in regard to the maintenance and repair of public highways which have been or may hereafter be improved or constructed by state aid.

L. 1914, ch. 253.

Section 1. The sum of ninety-five thousand six hundred and forty-one dollars (\$95,641), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, payable in installments by the state treasurer upon the warrant of the comptroller upon the certificate of the state commission of highways, for the purposes of carrying out the provisions of article seven of chapter thirty of the laws of nineteen hundred and nine, and all acts supplemental thereto and amendatory thereof, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," in regard to the maintenance and repair of public highways which have been or may hereafter be improved or constructed by state aid.

L. 1912, ch. 490.

Section 1. The sum of two million three hundred and five thousand three hundred and twenty-one dollars and forty-five cents (\$2,305,321.45) together with the further sum of one million forty-seven thousand six hundred and seventy-eight dollars and fifty-five cents (\$1,047,678.55) being the amount paid into the treasury down to but not including the first day of February, nineteen hundred and thirteen, pursuant to the provisions of article eleven of chapter thirty of the laws of nineteen hundred and nine, as amended by chapter three hundred and seventy-four of the laws of nineteen hundred and ten and chapter four hundred and ninety-one of the laws of nineteen hundred and eleven and all acts supplemental thereto and amendatory thereof, making a total sum of three million three hundred and fifty-three thousand dollars (\$3,353,000), or so much thereof as may be

needed, is hereby appropriated out of any money in the treasury, not otherwise appropriated, payable in installments by the state treasurer upon the warrant of the comptroller, upon the certificate of the state commissioner of highways, for the purpose of carrying out the provisions of article seven of chapter thirty of the laws of nineteen hundred and nine and all acts amendatory thereof and supplemental thereto, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," in regard to the maintenance and repair of public highways which have been or may hereafter be improved or constructed by state aid.

L. 1913, ch. 646.

Section 1. The sum of one million one hundred thousand dollars (\$1,100,000) is hereby appropriated out of any money in the treasury, not otherwise appropriated, payable in installments by the state treasurer upon the warrant of the comptroller, upon the certificate of the state commission of highways, on account of contracts for repairs upon the several public highways within the state, now under contract or to be contracted for.

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The sum of one million one hundred and forty-three thousand two hundred and twenty-eight dollars and fifty-two cents (\$1,143,228.52), being the amount paid into the treasury down to but not including the first day of February, nineteen hundred and thirteen, pursuant to the provisions of article eleven of chapter thirty of the laws of nineteen hundred and nine, as amended by chapter three hundred and seventy-four of the laws of nineteen hundred and ten and chapter four hundred and ninety-one of the laws of nineteen hundred and eleven, and all acts supplemental thereto and amendatory thereof, is hereby appropriated for the purpose of carrying out the provisions of article seven of chapter thirty of the laws of nineteen hundred and nine, and all acts supplemental thereto and amendatory thereof, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," in regard to the maintenance and repair of public highways which have been or may hereafter be improved or constructed by state aid.

L. 1914, ch. 522.

**APPROPRIATIONS FOR STATE AID TO TOWNS, ROADS  
IN INDIAN RESERVATIONS AND COUNTY ROADS.**

Section 1. The sum of one million seven hundred and ninety-five thousand two hundred and fifty-four dollars and twenty-seven cents (\$1,795,254.27), is hereby appropriated from any moneys in the treasury not otherwise appropriated, payable by the treasurer on the warrant of the comptroller. Of the money hereby appropriated, the sum of one million six hundred and thirty thousand dollars, or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amounts appropriated for the repair of highways pursuant to sections ninety and ninety-three of the highway law; the sum of eighty-seven thousand seven hundred and fifty dollars, or so much thereof as may be necessary shall be available for complying with the requirements of section one hundred and fifty-nine of said law; and the sum of seventy-seven thousand five hundred and four dollars and twenty-seven cents, or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amounts to be appropriated for the repair of county roads pursuant to section one hundred and seventy-eight of said law.

L. 1911, ch. 175.

Section 1. The sum of one million eight hundred and thirty-three thousand one hundred and eighty-two dollars (\$1,833,182), is hereby appropriated from any moneys in the treasury not otherwise appropriated, payable by the treasurer on the warrant of the comptroller. Of the money hereby appropriated, the sum of one million six hundred and sixty-nine thousand dollars, or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amounts appropriated for the repair of highways pursuant to sections ninety and ninety-three of the highway law; the sum of fifty-nine thousand one hundred and eighty-two dollars, or so much thereof as may be necessary shall be available for complying with the requirements of section one hundred and fifty-nine of said law; and the sum of one hundred five thousand dollars or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amounts to be appropriated for the repair of county roads pursuant to section one hundred and seventy-eight of said law.

L. 1912, ch. 505.

Section 1. The sum of one million seven hundred and ninety-six thousand six hundred and fifty-five dollars (\$1,796,655) is hereby appropriated from any moneys in the treasury not otherwise appropriated, payable by the treasurer on the warrant of the comptroller. Of the money hereby appropriated, the sum of one million seven hundred and twenty thousand dollars or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amounts appropriated for the repair of highways pursuant to sections ninety and ninety-three of the highway law; the sum of seventy-six thousand six hundred and fifty-five dollars, or so much thereof as may be necessary shall be available for complying with the requirements of section one hundred and fifty-nine of said law.

L. 1913, ch. 262.

Section 1. The sum of one hundred eleven thousand four hundred seventy-six and fifty-nine one-hundredths dollars (\$111,476.59), or so much thereof as may be necessary, is hereby appropriated, from any moneys in the treasury not otherwise appropriated, payable by the treasurer on the warrant of the comptroller, for the state's share of the expense of maintaining county roads pursuant to section one hundred and seventy-eight of the highway law.

L. 1913, ch. 636.

Section 1. The sum of one million eight hundred and ten thousand dollars (\$1,810,000) is hereby appropriated from any moneys in the treasury, not otherwise appropriated payable by the treasurer on the warrant of the comptroller; such sum or so much thereof as may be necessary, shall be available for the purpose of paying the state's proportion of the amount appropriated for the repair of highways pursuant to sections ninety and ninety-three of the highway law, and to provide funds for complying with the requirements of section one hundred and one of the highway law.

L. 1914, ch. 172.

#### APPROPRIATIONS FOR THE PAYMENT OF INTEREST.

Section 1. The sum of one million thirty thousand dollars (\$1,030,000) is hereby appropriated from the sinking fund now or which may hereafter be created by law for the payment of

interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the constitution and as provided by law, as the same shall become due and payable during the fiscal year beginning on the first day of October, nineteen hundred and eleven.

L. 1911, ch. 478.

Section 1. The sum of one hundred and sixty thousand dollars (\$160,000) is hereby appropriated from the sinking fund now or which may hereafter be created by law for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the constitution and as provided by law, as the same shall become due and payable during the fiscal year beginning on the first day of October, nineteen hundred and eleven.

L. 1912, ch. 112.

Section 1. The sum of one million three hundred and fifty thousand dollars (\$1,350,000) is hereby appropriated from the sinking fund now or which may hereafter be created by law for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the constitution and as provided by law, as the same shall become due and payable during the fiscal year beginning on the first day of October, nineteen hundred and twelve.

L. 1912, ch. 117.

Section 1. The sum of two million and seventy thousand dollars (\$2,070,000) is hereby appropriated from the sinking fund now or which may hereafter be created by law for the payment of interest on the debt for highway improvement contracted under article seven, section twelve of the constitution, and as provided by law, as the same shall become due and payable during the fiscal year beginning October first, nineteen hundred and fourteen.

L. 1914, ch. 175.

Section 1. The sum of two hundred and twenty-five thousand dollars (\$225,000) is hereby appropriated from the sinking fund now or which may hereafter be created by law for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section four of the constitution, and as provided by law, as the same shall become due and payable

during the fiscal year beginning on the first day of October, nineteen hundred and fourteen.

L. 1914, ch. 528.

#### APPROPRIATIONS FOR BRIDGES.

For the construction of a bridge in the Allegany Indian reservation across the Allegany river in the village of Salamanca, seventy thousand dollars (\$70,000), or so much thereof as may be necessary.

L. 1911, ch. 811.

Section 1. The sum of fifty-three thousand three hundred eighty dollars and twenty cents (\$53,380.20), being the unexpended balance of the appropriation made by chapter eight hundred and eleven of the laws of nineteen hundred and eleven, to be expended in carrying out the purposes of the act for the construction of a bridge in the Allegany Indian reservation across the Allegany river in the village of Salamanca, is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1913, ch. 363.

Section 1. The state highway commission is hereby authorized to rebuild a bridge across South bay, in the county of Washington, together with the necessary approaches and abutments.

§ 2. For the purpose of carrying into effect the provisions of this act the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, is hereby appropriated payable out of the moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, <sup>but</sup> no part of the moneys hereby appropriated shall be available, except for necessary surveys, plans and advertising, until a contract or contracts for the construction of such bridge and its appurtenances shall have been entered into by the superintendent of public works.

L. 1912, ch. 518.

Section 1. The sum of seventeen thousand seven hundred sixty-nine dollars and eighty-nine cents (\$17,769.89), being the unexpended balance of the appropriation made by chapter five hundred and eighteen of the laws of nineteen hundred and twelve, to be expended to rebuild a bridge across South bay in the county of Washington, together with the necessary approaches and abut-

ments, payable from moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, is hereby reappropriated from the same funds and for the same purpose as provided in said act.

L. 1914, ch. 255.

Section 1. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated for the purpose of a boulevard in the county of Albany, connecting state route three, trunk line (the so-called "stone road"), in the town of Bethlehem in said county with Delaware avenue in the city of Albany, and for the construction of a viaduct across the \*Norman'skill, in said county as part thereof, no portion of such appropriation to become available, however, until the property within the lines of the proposed boulevard shall have been conveyed for highway purposes to the county of Albany.

§ 2. The state commission of highways is hereby directed to survey said proposed boulevard from a point in the stone road near the \*Norman'skill aforesaid and running from thence northwesterly across said \*Norman'skill to Delaware avenue in the city of Albany, and to submit the preliminary survey for such improvement to the board of supervisors of Albany county for its approval and acceptance. Upon the acceptance of such plans by the board of supervisors the state engineer and surveyor is hereby directed to prepare plans and submit estimates for the construction of the viaduct across the \*Norman'skill, as aforesaid, which plans shall also receive the approval of the said board of supervisors. Title having been acquired to the lands within the lines of the proposed boulevard and plans for the viaduct and roadway having been approved by the board of supervisors, the state engineer is hereby directed to advertise for bids for the construction of the said viaduct and empowered to let the construction of the same to the lowest responsible bidder. The state commission of highways shall thereupon build the portion of the said boulevard not included in the viaduct in the same manner and with the same proportionate expense to the state, county, town and city, as provided in and under the county highway system of the highway law.

L. 1913, ch. 295.

\* So in original.

Section 1. The sum of twelve thousand five hundred dollars (\$12,500), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of paying the state's share of the expense of acquiring the property of the Stillwater Bridge Company, owning a bridge crossing the Hudson river at Stillwater, between the counties of Saratoga and Rensselaer, when such bridge and the franchise of said company shall have been acquired pursuant to the provisions of sections two hundred and sixty-three to two hundred and sixty-seven of the highway law. Said sum shall be paid by the state treasurer upon the warrant of the comptroller when there shall be filed with him a certificate of the attorney-general that the title to said bridge company's property has been acquired under the provisions of the highway law.

L. 1913, ch. 546.

Section 1. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purpose of paying the state's share of the expense of acquiring the property of the Cohoes and Lansingburgh Bridge Company, owning a bridge crossing the Hudson river and connecting the cities of Troy and Cohoes between the counties of Albany and Rensselaer, when such bridge shall have been acquired, pursuant to the provisions of sections two hundred and sixty-three to two hundred and sixty-seven of the highway law. Said sum shall be paid by the state treasurer upon the warrant of the comptroller, when there shall be filed with him a certificate of the attorney-general, that the title to said bridge company's property has been acquired under the provisions of the highway law.

L. 1913, ch. 547.

Section 1. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated for the purpose of paying the state's share of the expense of acquiring the property of the Union Bridge Company owning a bridge crossing the Hudson river at Waterford, between the counties of Saratoga and Rensselaer, when such bridge and the franchise of said company shall have been acquired pursuant to the provisions of sections two hundred and sixty-three to two hundred and sixty-seven of the highway law. Said sum shall be

paid by the state treasurer upon the warrant of the comptroller when there shall be filed with him a certificate of the attorney-general that the title to said bridge company's property has been acquired under the provisions of the highway law.

L. 1913, ch. 548.

#### SPECIAL APPROPRIATIONS.

AN ACT making an appropriation for the New York State Reformatory at Elmira, for the establishment of a brickmaking plant thereat.

Section 1. The sum of seventy-five thousand dollars (\$75,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the construction and equipment, at the New York State Reformatory at Elmira, of a brickmaking plant, including necessary buildings, machinery and appliances therefor. The moneys appropriated by this section shall be expended in the manner provided in section forty-nine of the state charities law.

L. 1914, ch. 214.

#### SPECIAL ACTS.

##### BOND ISSUE OF ORANGE COUNTY.

Section 1. The action of the board of supervisors of the county of Orange in providing by resolution adopted September twenty-second, nineteen hundred and eleven, for the issuance and sale of the bonds of said county, in the aggregate amount of one hundred and eighty-nine thousand dollars, in pursuance of the authority of chapter eighty-three of the laws of nineteen hundred and one of the state of New York, and the several acts amendatory thereof, including chapter two hundred and forty of the laws of nineteen hundred and eleven, is hereby legalized, ratified and confirmed, and the sale on December twenty-first, nineteen hundred and eleven, of said one hundred and eighty-nine thousand dollars bonds, maturing seven thousand dollars on the first day of October in each of the years from nineteen hundred and twelve to nineteen hundred and thirty-eight, inclusive, to the highest bidder at said sale, for one hundred and three and twenty-nine one hundredths dollars for each one hundred dollars par value of said bonds, and accrued interest, is likewise legalized, ratified and confirmed, notwithstanding any irregularity in the method of said sale.

§ 2. Said bonds, in the aggregate amount of one hundred and eighty-nine thousand dollars, shall bear date and be executed substantially in such form as provided in the aforesaid resolution of the board of supervisors adopted September twenty-second, nineteen hundred and eleven, and shall recite that they are issued pursuant to the authority of chapter eighty-three of the laws of nineteen hundred and one, as amended, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. Said bonds, when executed, shall be delivered to the treasurer of said county, who is hereby authorized to issue and deliver them to the highest bidder at said sale of December twenty-first, nineteen hundred and eleven, on receipt of the amount bid as aforesaid. In the event of the failure of said purchaser to accept delivery of and pay for said bonds the board of supervisors may direct the county treasurer to resell the same, either at public auction or on sealed bids upon notice as provided in said act.

§ 3. This act shall take effect immediately, but shall not affect any action or proceeding pending in any court at the time it takes effect.

L. 1912, ch. 12.

Section 1. The taxes levied in the year nineteen hundred and eleven for the repair of highways upon the real and personal property of the several towns are hereby legalized and confirmed so as to be of the same force and effect as though the boards of supervisors had in said year levied the minimum amount required to be levied and collected under the provisions of subdivision one, section ninety, chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1912, ch. 64.

Section 1. The canal board is empowered, in its discretion, on behalf of the state to consent to the discontinuance and abandonment of the portion of a highway lying between the tracks of the Delaware, Lackawanna and Western Railroad Company on the west and the Jamesville-Pompey county highway number six hundred and sixty-nine on the east, in the town of La Fayette, Onondaga county, laid out on lands taken by the state for canal purposes adjacent to the Jamesville reservoir.

L. 1913, ch. 622.

Section 1. That portion of the town highways of the town of Genesee Falls, in the county of Wyoming, which lie within Letchworth Park, in such county, shall hereafter be under the jurisdiction, charge and control of the American Scenic and Preservation Society, and no board or official of such town shall hereafter exercise any authority with respect to such highways. No part of the expense of maintenance or repairs of such portion of highways within such park shall be borne by such town, but shall be defrayed by such society from moneys appropriated therefor or from other funds in the hands of such society lawfully applicable to such purpose.

L. 1914, ch. 33.

Section 1. The supervisor of the town of Franklin, in the county of Franklin, shall prepare an account of unpaid assessments against the state for brush cut and removed in the years nineteen hundred and eleven and nineteen hundred and twelve by the town superintendent of highways of such town on public highways through wild or forest lands of the state, under section fifty-five of the highway law, heretofore returned to the comptroller pursuant to section one hundred of the tax law and rejected by him, and shall add the same to the assessment-roll of such town for the year nineteen hundred and fourteen, describing them therein as relieved taxes of nineteen hundred and eleven and nineteen hundred and twelve, respectively. Such assessments, when so relieved, shall have the same force and validity as though all requirements of section fifty-five of the highway law and of the tax law had been fully complied with and as though such taxes had been originally lawfully levied for the years nineteen hundred and eleven and nineteen hundred and twelve; and the board of supervisors of the county of Franklin shall cause to be reassessed and levied upon the lots or parcels of lands described in said account the taxes so added by such supervisor, and shall direct the collection thereof. The state treasurer, upon the certificate of the comptroller as to the correct amount of such added taxes, shall credit to the treasurer of Franklin county the amount thereof upon amounts payable or to be payable by such county treasurer for state taxes, and such county treasurer shall pay to the supervisor of such town the amount so credited from moneys collected in the county on account of state taxes.

L. 1914, ch. 57.

Section 1. Section two of chapter one hundred and thirty-eight of the laws of eighteen hundred and fifty-eight, entitled "An act to amend an act entitled 'An act to authorize the improving and keeping in repair a certain highway, in the county of Putnam, and to assess certain non-resident lands along the line of said road, and to pay the expenses of keeping the same in repair,' passed March twenty-fourth, eighteen hundred and fifty-seven," as amended by chapter four hundred and fifty-five of the laws of eighteen hundred and seventy-five, is hereby amended to read as follows:

§ 2. The board of supervisors of the said county, at their annual meeting the present year, and in each and every year hereafter, shall cause to be raised, and in the same manner as other county expenses are raised and provided, the sum of one thousand dollars to be expended by or under the direction of the commissioners appointed by this act each year in putting and keeping the said highway in proper order and repair. No part of said sum of one thousand dollars shall be retained by said commissioners or either of them, for services as such commissioners, but the board of supervisors shall audit their accounts in addition to the sum of one thousand dollars as herein provided.

L. 1914, ch. 252.